U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L1

[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 20 2008

MSC-06-053-21535

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods.

On appeal the applicant, through counsel, states that the director used an inappropriately strict standard in adjudicating the application and that the director did not give proper weight to the evidence submitted in support of the application. Counsel indicated that he would submit a brief within thirty days of filing the Form I-694 Notice of Appeal. There is no record that a brief was ever received in support of the appeal. On July 7, 2008 this office contacted counsel to request a copy of the brief in support of this appeal. Counsel did not respond to the request.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the

United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 22, 2005. At part #30 of the I-687 application, where applicants were asked to list their residences in the United States since their first entry, the first period of residence listed by the applicant began in 1981. The first period of employment, listed by the applicant at part #33 of the Form I-687 application, also began in 1981.

The applicant submitted the following documentation in support of her claim of residence in the United States since prior to January 1, 1982:

> Two affidavits from one dated January 16, 1991 and one dated January 17, 1991. In each affidavit the affiant states that he has known the applicant since May 1981 and that the applicant resided at [redacted] in Brooklyn, New York from May 1981 until "present." Although the dates and place of residence are consistent with information provided by the applicant on her I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, these affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two affidavits from J[redacted] both dated January 16, 1991. In each affidavit the affiant states that he has known the applicant since May 1981 and that the applicant resided at [redacted] in Brooklyn, New York from May 1981 until "present." The affiant does not explain the basis of this knowledge, does not explain how or when he met the applicant, and does not explain the nature and frequency of his contact with the applicant. In light of these deficiencies these affidavits have little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [redacted] SDS, pastor of Our Lady of Consolation Roman Catholic Church. The letter states that the applicant has been a member of the parish since 1982. The letter fails to comply with the regulation for attestations by churches in that it does not establish how the author knows the applicant and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). In addition, the letter lacks any details that would lend it credibility. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] dated January 18, 1991. The affiant states that the applicant worked for her as a "cleaning lady" from June 1981 until January 1986. The affiant also states that the applicant resided at [redacted] in Brooklyn, New York. This affidavit is deficient in that it does not comply with the regulation relating to past employment records. 8 C.F.R. § 245a.2(d)(3)(i). For example, the affidavit does not describe the applicant's job duties and does not state whether or not the information provided was taken from official company records. Even absent compliance with the regulation, the affidavit is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M- supra* at 81. However, the affidavit lacks probative details and therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [redacted] president of Top Job Personnel, Inc., dated January 11, 1991. The declarant states that the applicant worked for Top Job Personnel, Inc. beginning June 2, 1986. The letter is deficient in that it does not comply with the regulations relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment, does not provide the exact period of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). However, the record also contains a letter from the Social Security Administration which is dated April 5, 2000 and addressed to the applicant. This document shows that the applicant was employed by Top Job Personnel, Inc. beginning in 1986.

- A copy of an I-94 Departure Record for the applicant which bears an admission stamp dated March 26, 1986.

Although the I-94 Departure Record and letter from the Social Security Administration provide some evidence of the applicant's residence in the United States since 1986, the burden is on the applicant to prove her residence in the United States throughout the entire requisite period. 8 C.F.R.

§ 245a.2(d)(5). As explained above, the affidavits submitted by the applicant to prove her residence prior to 1986 are of minimal probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.