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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI Date: DEC 11 2008

MSC 05 298 31580

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:

SELF-REPRESENTED

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. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John Grissom, Acting 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 Director, Miami. 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 had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that her application for temporary resident status should be granted. [1]

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 245(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

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[1] 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The appeal in this instance was filed by [redacted] of the Caribbean Social Services Corp. [redacted] submitted a G-28, which was executed by the applicant, authorizing [redacted] to represent her in these proceedings. however, is not an accredited representative as defined in the above cited regulation, and he may not represent the applicant. The applicant is, therefore, deemed to be self-represented.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Witness Statements

- [redacted] submitted a notarized statement on behalf of the applicant wherein she stated that she met the applicant in Jamaica at "an island-wide church convention" where the two became friends, and thereafter maintained contact by mail. [redacted] stated that the applicant informed her in 1980 that she was migrating to the United States to be a caregiver for [redacted], a United States citizen that she met in Jamaica. The witness stated that the applicant departed for the United States in February of 1980, and that she continued to correspond with her and the two visited in February of 1984 when the applicant returned to

Jamaica to give birth to a child, in October of 1985 when she returned to Jamaica to give birth to a second child, and on other occasions when the applicant returned to Jamaica for visits. [redacted] stated that the applicant returned to the United States following the birth of each child, leaving the children with the applicant's mother. The witness further noted changes of employment and address for the applicant through 2002, and stated that the applicant had applied for the amnesty program but that her application had been denied. The witness stated that she migrated to the United States in the 1990s, and presently resides in Florida. In a second affidavit dated 10/04/06, the affiant stated that she had resided in the United States since the mid-1980s.

- [redacted] submitted a statement on behalf of the applicant wherein he stated that he has known the applicant since the 1970s, and that the two "have stayed in close communication ever since." [redacted] stated that the applicant chose to migrate to the United States to work for a United States citizen from New York that she had met in Jamaica. The witness stated that the applicant traveled to the United States in February of 1980, and that he visited with her when she returned to Jamaica in 1984 to give birth to a child, and on other occasions when she would return for a visit.

- [redacted] submitted a notarized statement on behalf of the applicant wherein she stated that she is a resident of Opalocka, FL, having migrated to the United States from Jamaica in 2005, and that she has known the applicant since the 1970s when the applicant's husband was her next-door neighbor. [redacted] stated that the two became friends and they would visit when the applicant visited her in-laws. The witness stated that the applicant migrated to the United States in 1980 to work for a lady that she had met in Jamaica. [redacted] stated that she stayed in touch with the applicant by telephone and saw her when she returned to Jamaica in 1984 to give birth to a child, in 1985 when she returned to Jamaica to give birth to a second child, and on other occasions when she would return to visit through 1989.

- submitted a notarized statement on behalf of the applicant wherein he stated that he grew up with the applicant in Jamaica, and that the applicant migrated to the United States in 1980. [redacted] stated that he stayed in touch with the applicant by telephone from 1980 until he migrated to the United States in 1985. At that time, the applicant was living in New York, but the two continued to talk by telephone until 1990 when the applicant moved to Florida.

- [redacted] submitted a notarized statement on behalf of the applicant wherein she stated that she knew the applicant in Jamaica and that the applicant served as her teacher in church. [redacted] stated that the applicant migrated to the United States in February of 1980 and that the two corresponded with each other thereafter. The witness stated that the applicant met a United States citizen in Jamaica who offered her employment as a caregiver in the United States. The witness stated that the applicant returned to Jamaica to give birth to her two children, and on other occasions for family visits. [redacted] also listed various jobs held by the applicant in the United States.

- submitted a notarized statement on behalf of the applicant wherein he stated that he grew up with the applicant in Jamaica, and that the two have been life long friends. stated that he left Jamaica to live in the Bahamas in 1979, but that the two have maintained contact by telephone. He stated that the applicant informed him that she had a job offer in the United States, and that she migrated to the United States in February of 1980. The witness stated that he relocated to the United States in 1981, and that he continued to maintain telephone contact with the applicant. [redacted] stated that the applicant told him of trips she made to Jamaica in the 1980s, two of which were to give birth to her children.

- submitted a statement on behalf of the applicant wherein she stated that she has known the applicant for over 30 years, that the applicant was active in her church, and that the applicant migrated to the United States in February of 1980 to work as a caregiver. This witness statement is almost identical to the witness statement submitted by [redacted] and detailed above, and with the exception of the "Good Moral Character" section of the statement, represents an almost word-for-word copy of the statement.

- submitted a notarized statement on behalf of the applicant wherein she stated that she has been a friend of the applicant since 1972 when the two lived near each other in Jamaica. [redacted] stated that the applicant migrated to the United States in February of 1980 to work as a caregiver and that the two have maintained contact over the years. The witness stated that the applicant returned to Jamaica in 1984 to have her child, and that she came back to Jamaica on a yearly basis until the end of the 1980s.

- submitted a notarized statement on behalf of the applicant wherein he stated that he knew the applicant in Jamaica, and that the applicant was active in her church and had served as his Sunday school teacher at one time. [redacted] stated that the applicant migrated to the United States in February of 1980 to work as a caregiver in New York. The witness listed various addresses and places of employment for the applicant in the United States, and further listed dates of the applicant's return to Jamaica in the 1980s. It cannot be determined from the witness statement how the applicant obtained the information in the statement about the applicant's periods and places of employment, or the applicant's return dates to Jamaica from the United States.

- [redacted] submitted a notarized statement on behalf of the applicant wherein she stated that she has been the applicant's friend for many years, and that the applicant migrated to the United States in February of 1980 to work as a caregiver. [redacted] also listed various addresses and places of employment for the applicant in the United States since 1980, and further listed dates that the applicant returned from the United States to visit Jamaica in the 1980s. It cannot be determined from the witness statement how the applicant obtained the information in the statement about the applicant's periods and places of employment, or the applicant's return dates to Jamaica from the United States.

- [redacted] submitted a statement on behalf of the applicant wherein she stated that she has known the applicant for over 30 years, that the applicant was active in her church, and that the applicant migrated to the United States in February of 1980 to work as a caregiver. This witness statement is identical to the witness statement submitted by [redacted] and detailed above, with the exception of the "Good Moral Character" section of the statement. This statement, and the statement of [redacted], are also practically identical to the statement of [redacted] detailed above.

- [redacted] submitted a statement on behalf of the applicant wherein she stated that she has known the applicant for over 30 years, that the applicant was active in her church, and that the applicant migrated to the United States in February of 1980 to work as a caregiver. This witness statement is practically identical to the witness statement submitted by [redacted] and [redacted] and detailed above, with the exception of the "Good Moral Character" section of the statement. This statement, and the statement of [redacted] and [redacted], are also practically identical to the statement of [redacted] detailed above.

Applicant Statements

- The applicant submitted two affidavits dated May 10, 2005. One affidavit stated that in June of 1983, the applicant was treated for illness by [redacted] in Miami, FL, and that she continued to visit this doctor whenever she returned to Florida. The applicant stated that she is unable to obtain her medical records from this physician because he cannot be located.

  In the second affidavit, the affiant stated that she is unable to produce receipts for rent, electricity, or furniture and appliances because room and board was included in her pay package as a caregiver. She further stated that she did not have a bank account because she did not have a social security number. She does not have W-2 Forms because she did not have a social security number, and thus, did not file tax returns. Finally, the affiant stated that she is unable to locate any medical bills or receipts.

Although the applicant has submitted several witness statements and two personal affidavits in support of her application, the applicant has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced witness statements have been submitted by acquaintances from Jamaica, only some of whom lived in the United States during the requisite period. The statements submitted are of little probative value. While some of the statements provide detail about the witnesses association with the applicant in Jamaica, they lack the detail necessary to establish an ongoing association with the applicant subsequent to her stated migration to the United States in 1980. The witnesses state simply

that they maintained telephone or letter contact with the applicant after she migrated, but provide no proof of that contact other than their unsworn assertions. Several of the witness statements are almost word-for-word copies of each other, thus decreasing their evidentiary weight. The record lacks statements or other proof of employment from any of the applicant's stated employers, who provided the applicant not only with employment during the requisite period, but with room and board as well. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness affidavits must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Of the statements submitted, only [redacted] and [redacted] indicated that they lived in the United States during the requisite period. [redacted] indicated that he moved to Florida in 1985. [redacted] indicated that he emigrated to Florida in 1981. Neither of them indicates personal knowledge of the applicant's residence in Florida until 1990, when she moved to Florida from New York. [redacted]'s second affidavit indicates that she moved to the United States in the 1990s. Because of this contradiction, [redacted] testimony will be accorded no weight. None of the remaining affiants have personal knowledge of the applicant's residence in the United States throughout the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.