U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARTFORD Date: JUN 10 2008

MSC 06 027 11897

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. 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.

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, Hartford, and is now before the Administrative Appeals Office 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. Specifically, the director addressed the two contemporaneous documents the applicant previously submitted and determined that neither established that the applicant entered the United States prior to January 1, 1982 and was residing in the United States during the dates indicated on either document. 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, counsel for the applicant asserts that the director failed to properly consider the evidence submitted in support of the applicant's claim and further states that the director should have considered the passage of time, which made it difficult for the applicant to provide further evidence to support her claim regarding her residence within the statutory period.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 during the requisite time period. Here, the applicant has not met this burden. The record shows that the only document submitted by the applicant at the time of filing the Form I-687 was a copy of her B1/B2 visa and passport page showing her entry into the United States on October 21, 2001. Accordingly, on November 22, 2005, the director issued a notice of intent to deny informing the applicant of this deficiency.

In her response, which was received on December 28, 2005, the applicant provided an undated letter in a foreign language. It appears that the applicant also provided a translation of the foreign letter, which was purportedly written by the applicant and addressed to someone named [redacted]. However, the regulation at 8 C.F.R. § 103.2(b)(3) sets forth the following provisions for foreign language documents:

> Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In the present matter, it appears that the applicant herself, rather than a certified translator, translated the foreign letter. Therefore, the translated document falls short of the regulatory requirements specified above. It is also noted that the letter contains no date, thereby making it impossible to determine whether it even pertained to the statutory period in question. Accordingly, based on these significant deficiencies, neither the foreign language letter nor its translation can be deemed probative and will not be accorded any evidentiary weight in this proceeding.

The applicant also provided an undated letter from the Technical Career Institute (TCI), whose contents indicate that the applicant was registered for a class starting July 5, 1982. The letter provided payment options for the registered student and contained a "Paid" stamp indicating that the class had been paid for. It is noted that this letter is not signed by any official from TCI, thereby detracting significantly from its probative value. It is further noted that this letter does not contain the applicant's residential address, which leads the AAO to question how the applicant even obtained it. Lastly, even if the authenticity and contents of the letter were not in question, at best, this letter establishes that the applicant was registered for a class that was to commence on July 5, 1982. There is no way to establish that the applicant was in the United States prior to the date the class commenced or that the applicant was even present in the United States as of July 5, 1982. It is possible for someone other than the applicant to have registered her and even paid for the class without her being present in the United States. Accordingly, this letter lacks sufficient probative value and will be afforded no evidentiary weight.

Lastly, the applicant provided an envelope addressed to at an apartment in New York, New York with a 1984 date stamp. Again, this document has no probative value, as it has no nexus to the applicant's residence in the United States during the statutory time period. As previously stated, the envelope is not addressed to the applicant at the address the applicant claimed to have resided in 1984. As such, this document will be afforded no evidentiary weight in this proceeding.

On September 29, 2006, the director issued a decision denying the application. The director properly concluded that neither the envelope nor the letter from TCI established that the applicant entered the United States prior to the commencement of the statutory period and was residing in the United State subsequent thereto.

On appeal, counsel asserts, "Affidavit[s] submitted in support of the case were not given due consideration[.]" However, counsel's argument does not reflect the facts in the present matter, as no affidavits were submitted in support of the applicant's residency claim prior to the appeal. As discussed above, the applicant relied entirely on the deficient contemporaneous documents, most of which were addressed in the director's decision and which have been further addressed in this decision. While two affidavits have been submitted on appeal, there is no evidence that either document was previously submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also asserts that the director failed to take proper account of the passage of time since the statutory period was in affect, suggesting that Citizenship and Immigration Services should somehow lessen the burden on the applicant to provide sufficient documentation establishing his/her continuous residence in the United States during the statutory period. This argument, however, is not supported by any statute, regulation, or precedent case law and is, therefore without merit.

Lastly, the two affidavits submitted by the applicant on appeal also lack probative value. One affidavit, dated March 20, 2006, is from [redacted]z, who claimed that he met the applicant in February 1982

on 116th St., Harlem, New York, where the applicant was selling imported items on the street. It is noted that in No. 33 of the Form I-687, where the applicant was asked to provide information about her employment in the United States dating back to the commencement of the statutory period, the applicant only indicated that she was self-employed, but provided no address, time period, or any other details about her alleged self-employment. As such, the affiant's statements regarding the applicant's employment cannot be verified by the general information provided by the applicant. While the affiant also stated that he has gotten to know the applicant's friends and family and is very fond of the applicant, he provided no specifics about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As a result of these deficiencies, [redacted]'s affidavit will only be afforded minimal evidentiary weight in this proceeding.

The other affidavit submitted on appeal was written by [redacted] and is undated. However, as [redacted] only claimed to have met the applicant in 2002, his statements have no probative value, as they do not pertain to the applicant's residence in the United States during the statutory period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. As stated previously, 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). 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.