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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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FILE:

MSC 05 251 13136

Office: DENVER

Date:

JUN 20 2008

IN RE:

Applicant:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Denver, and 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 specifically commented on the deficient evidence submitted in support of the applicant's claim and the applicant's prolonged absence, citing each as an independent contributing factor in the ultimate denial of the application. Additionally, although the denial was also based, in part, on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

On appeal, the applicant disputes the director's decision, asserting that Citizenship and Immigration Services (CIS) should have contacted the affiants who attested to her residence.

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 failed to meet this burden.

The record shows that the following documentation had been submitted prior to denial in support of the applicant's claim of continuous residence during the statutory period:

1. A letter dated December 18, 2005 from [REDACTED], who claimed to have met the applicant in 1983 through the applicant's cousin. The affiant claimed to have lived in Dallas, Texas from 1983 to 1986 and to have regularly met the applicant at various family functions. It is noted that this individual provided only general statements about the purported encounters with the applicant and failed to provide any specific details about the events and circumstances of the applicant's purported residence in the United States at the time the affiant claimed to have known her. As such, this statement will only be afforded only minimal weight as evidence of the applicant's claimed residence during the statutory period.
2. A letter dated December 28, 2005 from [REDACTED], who claimed that she is the applicant's sister and further stated that the applicant resided with her from December 1981 until October 1986. More specifically, [REDACTED] stated that the applicant first lived with her at [REDACTED], Dallas, Texas and claimed that the applicant helped [REDACTED] care for her newborn son and occasionally braided hair for friends and family. The credibility of [REDACTED] statement, however, comes into question in light of the

information provided by the applicant in her Form I-687. Specifically, with regard to her residential history in the United States, the applicant stated at No. 30 of the Form I-687 that from October 1981 to June 1991, she resided at [REDACTED], New York, New York. It was not until the applicant was questioned by a CIS officer about the responses in her application that she ultimately claimed to have resided in Texas during the statutory period.

3. Four envelopes and one post card purportedly mailed to the applicant's U.S. addresses during her claimed residence within the statutory period. As properly noted by the director, the postcard and two of the envelopes have illegible postmark dates so that the year of the alleged mailing cannot be established and one other envelope has no postmark date, thereby giving rise to doubt as to whether the envelope was mailed at all. Thus, only one envelope has a legible postmark date of September 18, 1987. However, the applicant's presence in the United States in September of 1987 is not in doubt in light of other documentation showing that the applicant entered the United States with an F-1 visa classification on April 22, 1987 and was admitted for duration of status. As the dates on the remaining four documents are illegible, these documents cannot be deemed as having any probative value in establishing the applicant's presence in the United States prior to her visa entry in April 1987.

On September 12, 2006, the director issued a denial, citing the various deficiencies with the above described documentation and further questioning the applicant's alleged familial relationship with [REDACTED] the individual who claimed to be the applicant's sister.

On appeal, the applicant asserts that any misgivings could have been cleared up if CIS had contacted Ms. [REDACTED] using the contact information provided in her letter. However, even if [REDACTED] had been contacted for further questioning, her statements alone would not be sufficient to resolve the inconsistency between the service records, which indicate that the first names of [REDACTED]'s parents are entirely different from the names of the applicant's parents as provided in Nos. 19 and 20 of the Form I-687. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Short of providing an authentic document, such as [REDACTED]'s birth certificate, her mere explanation and verbal attempt to dispel any doubt regarding her claimed relationship with the applicant would have been insufficient.

Moreover, the record is replete with other deficiencies that render the applicant's credibility dubious. Most notable are the inconsistencies between the information provided by the applicant initially on her Form I-687 regarding her residential history in the United States and the information she provided later on the same subject matter during an interview with a CIS officer. There is no explanation as to why the applicant initially claimed that she resided at a single New York address during the entire statutory period

(and beyond), but subsequently stated that she only resided at the New York address for one month prior to the commencement of the statutory period, with the remainder of her alleged residence in the United States purportedly spent in the State of Texas. With regard to her employment, the applicant initially claimed that she was self employed as a hair braider in New York from October 1981 to June 1991. This claim was also altered at the interview, where the applicant provided no employment information at all for the statutory period. As stated above, the applicant is expected to resolve inconsistencies with competent objective evidence. *Id.* In the present matter, these significant discrepancies have not been resolved. Furthermore, doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.* at 591.

In summary, the applicant has provided insufficient evidence to document her alleged residence in the United States within the statutory period. While there is contemporaneous evidence suggesting that the applicant entered the United States using an F-1 visa in April 1987, the record is lacking in sufficient probative and credible evidence establishing the applicant's continuous presence in the United States prior to that documented entry.

The absence of credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of this 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 contradictory statements and her 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.

Additionally, an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In the present matter, the applicant indicated in No. 32 of her Form I-687 application that she was absent from the United States on two occasions, only one of which she claimed took place during the statutory

period. With regard to that absence, the applicant claimed that she departed the United States in October 1986 and returned to the United States on April 22, 1987.¹ The applicant claimed that the purpose of her departure was to visit family and obtain the visa that she then used to enter the United States. In the present matter, the applicant has provided information stating that she departed the United States during the statutory period and that such absence was extended beyond the allowed 45-day period. There is no indication that an emergent reason "which came suddenly into being" was the cause for the extended absence. As such, it cannot be concluded that the applicant resided in the United States continuously during the statutory period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis as well.

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

¹ The record shows that initially, the applicant indicated in her application that she departed the United States in December 1986 and returned to the United States in March 1987. Although the applicant's initial claim included an absence for a shorter time period than the one the applicant subsequently detailed at the interview with a CIS officer, neither claim suggests that the applicant's absence was for a time period less than the allowed 45 days. As such, either of the applicant's claims regarding the length of her absence was sufficient to indicate that the continuous nature of her alleged unlawful residence during the statutory period had been interrupted, thereby rendering her ineligible for temporary resident status on this basis.