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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: New York Date: MAY 02 2008

MSC-05-306 15545

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 Records 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, 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 had not established by a preponderance of the evidence of entry to the United States before January 1, 1982 or 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, counsel asserts that the applicant submitted proof of her residence in the United States prior to January 1, 1982 and her eligibility under the CSS/Newman Settlement Agreements to support her application for temporary resident status.

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.

At issue in this proceeding is whether the applicant has submitted sufficient evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to on August 2, 2005. At part #30 of the Form I-687 application where applicants were asked to list Citizenship and Immigration Services (CIS) all residences in the United States since first entry, the applicant showed her first address in the United States to be at [redacted] Ozone Park, New York from October 1981 to February 1989. Similarly, at part #33, she showed her first employment in the United States to be for with Burger King Restaurant #925, D/B/A 69th St. Burger Corporation, 68-15 Northern Blvd., Jackson Heights, New York, from October 1983 to November 1983.

According to an affidavit submitted by the applicant dated July 14, 2005, she first entered the United States on October 15, 1981 at the age of eight. The applicant was born on February 11, 1973 in Guatemala. In that affidavit, the applicant stated that she is basing her application upon her mother's, [redacted], application and her own continuous presence in the United States from October 15, 1981 to December 20, 1989.

The applicant submitted copies of her Republic of Guatemala passport and the following relevant documentation:[1]

[1] Some of the evidence was dated outside the requisite period is, as noted in the discussion, therefore irrelevant to this proceeding.

- **An affidavit made November 6, 1995, by** [redacted] of Jamaica, New York, who stated that he is an employee of Burger King #925, Jackson Heights, New York, and was working there with the applicant from October 1983 to November 1983. The applicant would have been approximately 10 years old in the month of October 1983. The affiant then stated that the applicant has been living here in the United States "on or about from October 1981." There is no information in the affidavit how [redacted] learned of the applicant's residence in the United States, when the affiant first met the applicant, where he met her and how he is able to recollect that meeting that occurred 14 years before the date of the affidavit. The director noted, and the personal identification attached to the affidavit shows, that [redacted] has stated two dates of his birth, one in the affidavit (January 19, 1962) and the one on his New York State driver's license (October 7, 1954). Therefore the particulars of [redacted] personal identification are in question.[2] The affidavit is not credible evidence for the reasons stated.

  An affidavit made March 19, 2005, by of Jackson Heights, New York, who stated that she is an employee of Burger King, Jackson Heights, New York, and knew the applicant as a customer of Burger King from October 1981 (the applicant was eight years old then) and then later met the applicant there in October 1983 when she was employed there (at the age of ten years). There is no information in the affidavit how the affiant first met the applicant, where she met her and how she is able to recollect seeing or meeting the eight year old girl in October 1981, 24 years from the date of the affidavit. There is no evidence that Lucy [redacted] was in the United States in 1981 as claimed.

- An affidavit made June 27, 2005, by [redacted] of Flushing, New York, who stated that she used to work at the Indian Supermarket Inc., Flushing, New York, where she met the applicant. She then stated that the applicant worked there (Indian Supermarket Inc.) from April 1984 to November 1984 (at the age of 11 years), and then worked with the applicant at Wireless Link Inc. from October 1991 to November 1997. There is no evidence that [redacted] was in the United States in 1981 as claimed.

- **An affidavit made June 27, 2005, by** [redacted] of Elmhurst, New York, who stated that he is an employee of Burger King, Jackson Heights, New York, and knew the applicant as a customer of Burger King from October 1981. The applicant was eight years old at that time.[3] There is no specific information in [redacted]s affidavit as to how he is able to recollect seeing or meeting the applicant in October 1981 that occurred 24 years before the date of the affidavit.

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[2] A credible affidavit is a notarized statement that includes a biographic (i.e. photo identification for example) document that identifies the affiant.

[3] According to the map, it is over six miles between the applicant's then residence in Ozone Park, New York, and Jackson Heights, New York which is the location of that restaurant.

- An affidavit made March 19, 2005, by of Jackson Heights, New York, who stated that she attended grade school with the applicant where she met her "on or about September 1982." (The applicant has not submitted school records of attendance at the named grade school.) She also stated that she worked with the applicant at Burger King in 1983. (The applicant was ten years old in 1983).

- An affidavit made March 20, 2005, by [redacted] of Richmond Hill, New York, who stated that she knew the applicant when they worked together at Velca Fashions Inc, Brooklyn, New York. She stated that the applicant worked there from July 1985 to November 1989. The affiant then stated that the applicant has been residing in the United States from October 1981 and that the applicant and the applicant's mother did attempt to submit an applicant for legalization in 1988. There is no specific information in [redacted] affidavit when the affiant first met the applicant, where she met the child or her mother and how she is able to recollect seeing, meeting or knowing the applicant in October 1981 that occurred 24 years before the date of the affidavit.

- An affidavit made March 20, 2005, by of Richmond Hill, New York, who stated that she knew the applicant when they worked together at Velca Fashions Inc, Brooklyn, New York. She stated that the applicant worked there from July 1985 to November 1989. The affiant then stated that the applicant has been residing in the United States from October 1981 and that the applicant's mother did attempt to submit an applicant for legalization in 1988. There is no specific information in [redacted] affidavit when the affiant first met the applicant, where she met the child and her mother and how she is able to recollect seeing, meeting or knowing the applicant in October 1981 that occurred 24 years before the date of the affidavit.

- An affidavit made March 7, 1988, by [redacted] of South Richmond Hill, New York, who stated that she has known the applicant and her mother since 1981 when she was home sick with "massive diabetic." There is no specific information in [redacted]'s affidavit about when the affiant first met the applicant, where she met the child and how she is able to recollect seeing, meeting or knowing the applicant in October 1981, when she was sick at home, that occurred nine years before the date of the affidavit. The affiant also stated that the applicant "was working in my house cleaning and taking care of me from November 1984 to May 1985 in the weekend (the applicant would have been between 11 and 12 years of age)."

- An affidavit made June 14, 2005, by [redacted] of Bronx, New York, who stated that she has known the applicant and her mother "approximately from 1981 from Our Lady Sorrows Church." There is no specific information in [redacted]'s affidavit as to how she is able to recollect seeing, meeting or knowing the applicant "approximately from 1981" that occurred 24 years before the date of the affidavit. There is no statement that the affiant's recollection concerns 1981 or is a general recollection around that date.

- An affidavit made June 14, 2005, by [redacted] of Corona, New York, who stated that she has known the applicant and her mother "approximately from 1981 from Our Lady Sorrows Church." There is no specific information in [redacted] affidavit as to how she is able to recollect seeing, meeting or knowing the applicant in "approximately from 1981" 24 years before the date of the affidavit.

- An affidavit made June 14, 2005, by of Manhattan, New York, who stated that she has known the applicant and her mother approximately from 1981 from Our Lady Sorrows Church. There is no specific information in [redacted]' affidavit as to how she is able to recollect seeing, meeting or knowing the applicant "approximately from 1981" 24 years before the date of the affidavit.

- An affidavit made April 16, 2005, by [redacted] of Las Vegas, Nevada, who stated that when the applicant and her mother first came to the United States "on October 15, 1981, they had contacted me by telephone in Los Angeles soon after there [sic] arrival to New York." There is no specific information in [redacted]s affidavit as to how he is able to recollect a conversation and a date (month, day and year) that occurred 24 years before the date of the affidavit. There is no evidence that [redacted] was in the United States in 1981 as claimed.

- An affidavit made June 20, 2005, by [redacted] of Lauderhill, Florida,[4] who stated that she was residing at [redacted], Ozone Park, New York, and the applicant and her mother came to live with her "on or about October 1981." According to [redacted], the applicant and her mother lived with her continuously for eight years but she has no proof of this other than her statement of this fact. There is a statement in the record of proceeding dated December 5, 1989, that the applicant and mother leased a room from [redacted] There is no proof of payment of room rent or utilities by the applicant and her mother. When asked for photographs taken of [redacted] and the applicant together she stated "I don't have any photographs in my possession . . . but I am sure plenty of photograph [sic] was [sic] taken in many occasion. I just don't have any in possession to give him." The affidavit is lacking in detail regarding the events and circumstances of the applicant's residence with her in the United States that would tend to lend credibility to her claim that she has direct, personal knowledge of the applicant's residence. She provided no verifiable information, such as, for example, what the applicant did during the requisite period. The lack of detail is significant, considering that the affiant claims to have a friendship with the applicant spanning more than 24 years. The letter from [redacted] can only be afforded limited weight as corroborating evidence of the applicant's residence since 1981, due to its lack of detail.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally

[4] Although the affidavit was notarized in New York State, the affiant resides in Florida.

consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *See Matter of E- M--,* 20 I&N Dec. at 80. The volume of evidence is not necessarily the decisive factor in the search for the truth. The contents of the affidavits must be assessed as is discussed above and the quality of the evidence determined.

The applicant submitted multiple affidavits that were substantially identical. These included affidavits from [redacted] and [redacted]. These affidavits fail to include detail regarding the applicant's presence in the United States and all are vague when they first met the applicant. All used the phrase "approximately from 1981." As a result, these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. Three of the affidavits were notarized by [redacted]. According to the director, [redacted] is not a licensed notary.

The applicant has also submitted letters from various employers pertaining to the requisite period as follows:

- An employment verification letter dated December 5, 1983, on company letterhead from Creative Foods Corporation a franchisee of Burger King Corporation D/B/A 69th Street Burger Corporation, Jackson Heights, New York, by [redacted] District Supervisor, stating that the applicant was an hourly employee employed there from October 4, 1983 to November 30, 1983. (The applicant would have been ten years old in 1983). As already stated the applicant has submitted an affidavit made June 27, 2005, by [redacted] of Elmhurst, New York, who stated that he is an employee of Burger King, Jackson Heights, New York, and knew the applicant as a customer of Burger King from October 1981. The applicant was eight years old in 1981 and lived six miles away. This latter affidavit does not mention that the applicant was an employee of Burger King according to the letter dated December 5, 1983 at ten years old.

- An employment verification letter dated December 12, 1983, on company letterhead from Creative Foods Corporation a franchisee of Burger King Corporation D/B/A 69th Street Burger Corporation, Jackson Heights, New York, by [redacted] president, stating that the applicant was an hourly employee employed there from October 4, 1983 to November 30, 1983. The letter has on it a corporate seal indicating that the company was incorporated in New York State on 1972.

- An employment verification letter dated November 30, 1984, on letterhead from Indian Super Market, Flushing, New York, by Harris U. Khan, president, stating that the applicant was a part time helper doing cashiering and packing dry foods employee employed there from April 10, 1984 to August 23, 1984 and paid in cash. The letter has on it a corporate seal indicating that the company was incorporated in New York State on 1978. There is no information on the New York State, Department of State, Division of Corporations web site

http://appsext8.dos.state.ny.us as accessed April 27, 2008, that Indian Super Market was an active corporation in 1978 under that name.

- An employment verification letter dated October 20, 1989, on company letterhead from Velca Fashions Inc., New York, by [redacted] president, stating that the worked for the company as an hourly worker "doing peace [sic] work in the factory and sewing" since July 12, 1985. The letter has on it a corporate seal indicating that the company was incorporated in New York State on 1982. There is information on the New York State, Department of State, Division of Corporations web site http://appsext8.dos.state.ny.us as accessed April 27, 2008, that Velca Fashions Inc. was an active corporation in 1982 as incorporated on November 9, 1982.

- An employment verification letter dated April 4, 1984, on company letterhead from [redacted] Restaurant Inc., 640 Madison Avenue, New York, New York, that '[redacted] was employed there from December 21, 1983 until March 30, 1984 as a "dining room hostage [sic]." The letter has on it a corporate seal indicating that the company was incorporated in New York State on 1982. There is information on the New York State, Department of State, Division of Corporations web site http://appsext8.dos.state.ny.us as accessed April 27, 2008, that [redacted] Restaurant Inc. was an active corporation in 1982 as incorporated on June 22, 1982.

All the above employment verification letters fail to meet all or some of the regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. However assuming that the letters are accurate, and that the earliest employment experience of the applicant was at the age of ten in a Burger King Restaurant in Jackson Heights, New York, commencing October 4, 1983, the various periods of time stated above of employment are all after January 1, 1982. Therefore the letters are not probative of the applicant's entry into the United States before January 1, 1982.[5]

The director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) issued March 8, 2006. The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period.

[5] The affidavit from [redacted] of South Richmond Hill, New York, has already been discussed.

This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters.

No additional evidence was submitted by the applicant. The applicant submitted a letter she prepared dated April 6, 2006, that gave the applicant's opinion as to the weight of the evidence she presented and stating that other evidence requested by the director was unavailable.

The director denied the application for temporary residence on July 11, 2006. In denying the application, the director found that the applicant's testimony that she entered the United States in 1981 is not credible. The director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

In summary, the applicant has not provided sufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for the unsupported and unsubstantiated affidavits noted above.

In this case, the absence of sufficient and probative 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 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 inconsistencies in the record and the insufficient supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she 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.