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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: JACKSONVILLE Date: NOV 19 2008

MSC-06-096-18692

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.

John F. 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 of the Jacksonville office, 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 denied the application, finding 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.

On appeal, counsel for the applicant states that the denial is contrary to the terms of the law and is abuse of discretion, the director's decision is erroneous in law and facts, the decision is contrary to the weight of the evidence, the denial fails to apply the correct preponderance of the evidence standard, and the decision is contrary to the terms and conditions of the CSS/Newman Settlement Agreements.

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 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 4, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following Houston, Texas addresses during the requisite period: [redacted] from July 1981 to May 1983; [redacted] from June 1983 to June 1984; [redacted] from June 1984 to June 1986; [redacted] from July 1986 to December 1987; and [redacted] from January 1988 to June 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing.

The record contains numerous documents that do not relate to the requisite period or do not relate specifically to the applicant. These documents will be given no weight in determining whether the applicant has established that she resided in the United States throughout the requisite period. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship written by the applicant's friends, family, and former employers. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. When taken as a whole, these documents fail to establish the applicant's 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 applicant provided an affidavit from [redacted] head priest with the [redacted] in New York. The affidavit states that the affiant has known the applicant since 1971 and that the applicant's husband was a "regular" in his temple in India. The affiant stated that the applicant came to his temple in India in 1981 before leaving for the United States. The affiant stated that when he came to the United States he saw the applicant at his New York temple, and that she comes to his temple once a year. He also stated that he has visited the applicant's house a few times in Tallahassee. This affidavit does not specifically state that the applicant resided in the United States at any time other than in 1981. This affidavit also tends to show that the affiant has personal knowledge of the applicant's activities only once a year, during an unspecified period. Lastly, this declaration is inconsistent with the applicant's Form I-687, where she failed to list the affiant's temple when asked to list all affiliations or associations. Due to these deficiencies, this affidavit will be given only nominal weight towards determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided three attestations from [redacted]. The notarized declaration dated November 10, 2004 states that the applicant has lived in the United States since 1981 and has been the declarant's good friend since 1983. The declarant stated that the applicant's husband came to Georgia in 1983 when the applicant still lived in Houston. The affiant met the applicant and her husband when the affiant would come to Georgia to visit her future husband. She stated that she stopped by the applicant's apartment in 1984 when she went to Houston to see her cousins. She also stated that she has shared frequent meals with the applicant. This declaration fails to explain the origins of the declarant's knowledge of the applicant's residence in the United States since 1981. It also fails to state that the applicant resided in the United States during the requisite period, other than in 1983 and 1984. Lastly, the declaration lacks detail regarding the frequency of the declarant's contact with the applicant during the requisite period. The declaration dated December 2, 2005 states that the declarant has known the applicant's husband and his family since the early 1980s. The declarant stated that she knew the applicant, who lived in Houston, Texas. She stated that she visited the applicant once, as the applicant was quite close to the declarant's cousins. This declaration fails to specifically state that the applicant resided in the United States during the requisite period. It also lacks detail regarding when the declarant met the applicant and the nature and frequency of their contact during the requisite period. An additional declaration dated December 2, 2005 states that the applicant came to the United States in 1981, and that the declarant has known the applicant "for a long time." The applicant stayed in Houston when her son went to Georgia to live with his father in 1983. The declarant stated that she remembered meeting the applicant in Houston. This declaration fails to indicate that the applicant resided in the United States during the requisite period, other than from 1981 to 1983. It also lacks detail regarding when the declarant met the applicant, the nature and frequency of their contact during the requisite period, and the origins of the declarant's knowledge of the applicant's residence. Considering the deficiencies among these declarations, they will be given only nominal weight.

The applicant submitted two declarations from [redacted] dated December 2, 2005. The first declaration states that the declarant met the applicant's husband in 1983 and that the applicant lived in Houston. The declarant stated that he knows that the applicant's husband and his family came to the United States in 1981. This declaration fails to specifically state that the applicant resided in the United States at any time other than during 1981 and 1983. In addition, it lacks detail regarding when and how the declarant met the applicant and the nature and frequency of their contact during the requisite period. Lastly, the declaration fails to explain the origin of the declarant's knowledge of the applicant's entry to the United States in 1981. The second declaration states that the applicant came to the United States in 1981. This declaration fails to state that the applicant resided in the United States during the requisite period. It also lacks detail regarding when the declarant met the applicant, and the nature and frequency of their contact during the requisite period. Considering these limitations, these declarations will be given only nominal weight.

The declaration of states that the declarant met the applicant in 1983 when the applicant's husband began working at a store in Georgia where the declarant bought clothes. He stated that the applicant was in Houston but he met her when she came to visit her husband. He stated that the applicant has been in the United States since 1981. This declaration lacks detail regarding the nature and frequency of the declarant's contact with the applicant during the requisite period and it fails to explain the origin of the declarant's knowledge of the applicant's entry to the United States in 1981. Therefore, it will be given only minimal weight.

The notarized declaration from [redacted] states that the applicant is the declarant's sister-in-law and has been living in the United States since 1981. The declarant stated that the applicant was living in Houston with her son, the declarant visited her twice in Houston, and her son used to spend his summer holidays with the declarant every other year. The applicant also visited him several times. This declaration lacks detail regarding the year that the declarant met the applicant and the nature and frequency of the declarant's contact with the applicant during the requisite period, including the origins of his knowledge of the applicant's continuous residence in the United States since 1981. Despite these deficiencies, this declaration will be given limited weight in establishing that the applicant resided in the United States during the requisite period.

The affidavit dated May 15, 1990 from [redacted] states that the affiant has known the applicant since 1983. He stated that the applicant was living at the [redacted] address when she met the applicant. He stated that the applicant lived at that address from June 1984 to June 1986. This affidavit is internally inconsistent in that it indicates that the affiant met the applicant in 1983 and when she was living at the [redacted] address, as well as that the affiant lived at that address between 1984 and 1986. This inconsistency casts doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The affidavit from [redacted] states that she has been acquainted with the applicant since 1984, and she knows that the applicant lived at [redacted] from July 1986 through December 1987. This affidavit lacks detail regarding how the affiant met the applicant, the nature and frequency of their contact during the requisite period, and the region where the applicant resided when they became acquainted. It also fails to state that the applicant resided in the United States at

any time other than from July 1986 through December 1987. Considering these deficiencies, this declaration will be given only nominal weight in establishing that the applicant resided in the United States from July 1986 through December 1987.

The applicant provided three attestations from [redacted] of the [redacted] in New York. These attestations all state that the applicant has resided in the United States since 1981. The declarations also indicate that the applicant visits the declarant's temple. These declarations are inconsistent with the applicant's Form I-687, where she failed to list the temple when asked to list all affiliations or associations. In addition, the declarations do not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declarations do not state the addresses where the applicant resided during the membership period. Considering these deficiencies, these declarations will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The declaration from [redacted] indicates that the applicant is the declarant's daughter. The declarant stated that she knows that the applicant left for the United States in 1981 because she accompanied the applicant to the airport in Bombay, and she has been in touch with the applicant by phone and mail since 1981. The applicant has also visited her mother three times since 1981. This document constitutes some evidence that the applicant resided in the United States during the requisite period.

The declaration from states that the declarant knows the applicant very well. She met the applicant in the fall of 1981 at a common friend's party in Houston Texas. She states that she visited the applicant's apartment on [redacted] in Houston several times in 1981 and 1982. This declaration fails to specifically state that the applicant resided in the United States during the requisite period, other than in 1981 and 1982. This declaration merely constitutes some evidence of the applicant's residence in the United States during 1981 and 1982.

The declaration from indicates that the declarant is the applicant's sister-in-law. She stated that the applicant moved to the United States in 1981 and that she has been in touch with the applicant over the phone over the years. She also referred to the applicant's visit to India to visit the applicant's mother. The declarant refers to her temple in New York, and states that she was informed by the temple that the applicant has been visiting it. This declaration is inconsistent with the Form I-687, where the applicant failed to list the temple when asked to list all affiliations or associations. In addition, the declaration failed to provide detail regarding the frequency of the declarant's contact with the applicant during the requisite period and the date when she met the applicant. Considering these deficiencies, these declarations will be given only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The affidavit dated April 24, 2002 from [redacted]i states that the applicant is his sister-in-law and has been living in the United States since 1981. He talked to the applicant on the phone when he first came to the United States. He saw her in Houston in 1984, and she has been to his house in Jacksonville twice since then. He has been in touch with her over the years. This affidavit lacks detail regarding when the affiant met the applicant, how he dates the beginning of her residence in

the United States, and their frequency of contact during the requisite period. Therefore, it will be given only minimal weight.

The affidavit dated August 23, 2005 from [redacted] states that the applicant is the affiant's sister-in-law and has been living in the United States since 1981. The applicant lived with the affiant before she moved to the United States, and the affiant kept in constant touch with her by phone and mail. After the affiant moved to the United States in 1988, she and the applicant visited each other frequently. This declaration lacks detail regarding the frequency of the applicant's contact with the affiant, and the region where she resided during the requisite period. Therefore, it will be given only minimal weight.

The applicant also provided three attestations from former employers. All these attestations fail to conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the attestations do not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, these declarations will be given only nominal weight.

The numerous inconsistencies in the record and the absence of sufficient and detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 heavy reliance upon documents that have minimal probative value, it is concluded that she has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.