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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 28 2008

MSC-05-223-11306

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.

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, Los Angeles. 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 entered the United States without inspection at San Ysidro, California in November 1980. The applicant states that she did not apply for legalization during the original application period because she was informed that she did not qualify due to her departure in 1987. The applicant states that the affidavits she submitted were credible. The applicant states that she presented evidence to satisfy the eligibility requirements. The applicant states that the director did not explain why the affidavits she submitted were not given substantial weight. The applicant states the director did not challenge her credibility, the affiants' credibility, or the authenticity of the affidavits. The applicant asserts that the low evidentiary weight given to the affidavits was not substantiated in the instant case.

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).

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) 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 credible 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 Citizenship and Immigration Services (CIS) on May 11, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period she resided at [redacted], El Monte, California from November 1980 to June 1986 and [redacted], El Monte, California from June 1986 to May 1990. At part #33, she showed her first employment in the United States to be as a laborer in Kernan, California from May 1985 to May 1988.

The applicant submitted the following documentation:

- A fill-in-the-blank affidavit from [redacted], dated July 1988. Mr. [redacted] states in his affidavit that the applicant was employed by him as a seasonal agricultural worker. He states that he was a foreman supervising the picking of peaches and grapes. He states that he was working for [redacted], crop purchaser, [redacted] Ranch, [redacted] Farm, [redacted] and [redacted] Ranch. Mr. [redacted] lists the applicant's periods of employment as 30 days in June 1985; 20 days in July 1985; 15 days in August 1985; 18 days in September 1985; and 30 days in October 1985. However, the affidavit does not indicate how [redacted] dated the applicant's periods of employment. It also does not specify the location of the applicant's employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers must include the applicant's address at the time of employment; whether or not the information was taken from official company records; and where such records are located and whether CIS may have access to the records. If the records are unavailable, an affidavit form-letter stating that the employment records are unavailable and why such records are unavailable may be accepted. 8 C.F.R. § 245a.2(d)(3)(i). This letter fails to comply with these delineated guidelines. Given the numerous deficiencies in this letter, it without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- The following letters from [redacted]:

  - Mr. [redacted] states in a letter dated January 15, 1988 that the applicant was "one of the employees who made herself available for work during the course of the season described in item #11 of attached form [redacted]" Mr. [redacted] states that he has been acquainted with the applicant since 1984. The record does contain not a form to identify the location and periods of the applicant's employment. Furthermore, the letter fails to convey how and where Mr. [redacted] first became acquainted with the applicant. It also does not convey how he dated his initial acquaintance with the applicant.

  - Mr. states in an undated letter that the applicant worked for him during the time period mentioned in the "attached forms." He states that the applicant was picking & packing and "everything else." Attached to this letter is a fill-in-the-blank form letter from Mr. [redacted], dated November 1988. Mr. [redacted] states in this letter that the applicant was employed with him from May 1, 1985 to May 1, 1988. These letters do not indicate the location where the applicant was employed. They also do not convey how Mr. [redacted] dated the applicant's period of employment.

As stated above, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers must include the applicant's address at the time of employment; whether or not the information was taken from official company records; and where such records are located and whether CIS may have access to the records. If the records are unavailable, an affidavit form-letter stating that the employment records are unavailable and why such records are unavailable may be

accepted. 8 C.F.R. § 245a.2(d)(3)(i). The letters from Mr. [redacted] fail to comply with these delineated guidelines. Given the numerous deficiencies in the letters, they are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank letter from [redacted], dated November 1988. Ms [redacted] states in her letter that the applicant was her tenant and rented [redacted] Fresno, California from May 1985 to May 1986. However, the applicant did not list this address as a place of residence on her Form I-687. The applicant instead showed that during the period of May 1985 to May 1986 she was residing at [redacted], El Monte, California. Given this inconsistency, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted], dated May 24, 1993. Ms. [redacted] states in her affidavit that she has known the applicant since 1983. Ms. [redacted] states that the applicant is her very close friend and they have seen each other on a regular basis since 1983. This affidavit fails to convey how and where Ms. [redacted] first met the applicant. It also does not convey how she dated her initial acquaintance with the applicant. Furthermore, it does not illustrate the frequency of their contact in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted], dated July 23, 1993. Mr. [redacted] states in his affidavit that the applicant lived at [redacted], El Monte, California from November 1980 to June 1986. He states that the applicant paid her rent on time and had a good friendship with her neighbors. This affidavit fails to establish the source of the information Mr. [redacted] has attested to. The affidavit does not convey Mr. [redacted] relationship with the applicant, and how he has knowledge of the applicant's residence and payment of rent. Furthermore, it does not indicate how, when and where Mr. [redacted] first became acquainted with the applicant. It also does not convey how he dated his initial acquaintance with the applicant. Finally, it does not illustrate the frequency of their contact in the United States during the requisite period. Given these numerous deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] dated May 26, 1993. Ms. [redacted] states in her affidavit that she knows that the applicant has resided in southern California since November 1980. It states that the applicant is a friend of her family and they see each other regularly at family gatherings, parties and other social events. This affidavit fails to convey how and when [redacted] first became acquainted with the applicant. It does not convey whether [redacted] has direct personal knowledge of the applicant's residence in the United States since November 1980. Furthermore, it does not detail the frequency of their contact in the United States during the requisite period. Given these deficiencies, this affidavit is without

any probative value as evidence of the applicant's residence in the United States during the requisite period.

On December 9, 2005, the applicant was interviewed in connection with her application for temporary resident status. The adjudication officer issued a Form I-72, Request for Evidence, to the applicant. The adjudication officer requested the applicant to provide proof of the affiants' residence in the United States from before 1982 to 1986, and their phone numbers. The officer afforded the applicant 30 days to submit this documentation.

In response to the Form I-72, the applicant submitted the following documentation:

- A letter from a Notary Public, [redacted], dated December 20, 2005. Mr. [redacted] states in his letter that he notarized and acknowledged the presence of [redacted] and [redacted]. He states that these affiants indicated that they knew and were well acquainted with the applicant. This letter only verifies the identity of these individuals; it does not corroborate their direct personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] dated December 14, 2005. Attached to this affidavit are copies of Ms. [redacted] California Identification Card, issued August 16, 1993, and her Permanent Resident Card, indicating that she has been a permanent residence since June 7, 1990. Ms. [redacted] states in her affidavit that she met the applicant at a Christmas holiday celebration in El Monte, California around December 1980. Ms. [redacted] states that she became good friends with the applicant and they have had close contact on a monthly basis since 1980. This letter fails to illustrate the frequency of Ms. [redacted] contact with the applicant in the United States throughout the requisite period. Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted], dated December 16, 2005. Attached to this affidavit are copies of [redacted]s California Senior Citizen Identification Card, issued May 10, 2005, and her Permanent Resident Card, indicating that she has been a permanent resident since November 23, 1965. [redacted] states in her affidavit that she was employed for 28 years as a seamstress. She states that in mid 1982 she became acquainted with the applicant through a mutual friend who also worked as a seamstress. She states that the applicant has worked in the textile industry for many years. Ms. [redacted] states that she has kept in touch with the applicant on a continuous basis and they visit each other periodically. This affidavit fails to convey where [redacted] and the applicant first became acquainted. It also fails to indicate how [redacted] dated her initial acquaintance with the applicant. Furthermore, the affidavit does not illustrate the frequency of their contact in the United States during the

requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

An affidavit from [redacted], dated December 14, 2005. Attached to this affidavit are copies of [redacted]s California Identification Card, issued July 22, 2000, and Permanent Resident Card, indicating that she has been a permanent resident since March 27, 1990. [redacted] states in her affidavit that she met the applicant in the late 1980's. She states that when they met in the late 1980's they became friends and talked about being seamstresses. She states that she gave the applicant references for work and the applicant began working soon afterwards in the garment industry. Ms. [redacted] states that they have kept a continuous relationship and frequent each other almost on a weekly basis. This letter fails to specify the date that Ms. [redacted] first met the applicant. It states that after they first met in the late 1980's, the applicant began working in the garment industry. The applicant indicated on her Form I-687 that she was first employed in the garment industry, QSP Sportswear, in January 1989. Based on this information, it can be reasonably deducted that Ms. [redacted] first met the applicant outside the requisite period. Therefore, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from dated December 16, 2005. Attached to this letter are copies of [redacted]s California Identification Card, issued February 22, 2000, and Permanent Resident Card, indicating that she has been a permanent resident since November 24, 1989. [redacted] states in her affidavit that she worked with the applicant for many years in a textile company in El Monte California starting around the year 1981. She states that she has known the applicant since June 1981 and she is in continuous contact with the applicant on a monthly basis. Ms. [redacted] affidavit is inconsistent with the employment history the applicant provided on the instant application. As stated above, the applicant's Form I-687 shows that her first employment in the garment industry was in January 1989. The applicant's Form I-687 shows that prior to this date she was employed as a laborer in Kernan, California. Given this inconsistency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On August 15, 2006, the director issued a Notice of Decision to deny the application, stating that the information the applicant submitted failed to establish by a preponderance of the evidence that she is eligible for temporary resident status. The director stated that the applicant failed to submit any evidence that the affiants were present in the United States before 1982 though 1986. The director concluded that the applicant is not eligible for temporary resident status.

On appeal, the applicant asserts that she entered the United States without inspection at San Ysidro, California in November 1980. The applicant states that she did not apply for legalization during the original application period because she was informed that she did not qualify due to her departure in 1987. The applicant states that the affidavits she submitted were credible. The applicant states that she presented evidence to satisfy the eligibility requirements. The applicant

states that the director did not explain why the affidavits she submitted were not given substantial weight. The applicant states the director did not challenge her credibility, the affiants' credibility, or the authenticity of the affidavits. The applicant asserts that the low evidentiary weight given to the affidavits was not substantiated in the instant case.

The applicant furnishes the following documentation:

- Copies of [redacted] identity documents, which include: her California Senior Citizen Identification Card with a renewal receipt, showing her residence in El Monte, California; her previous Resident Alien Card; and her current Permanent Resident Card, showing that she has been a United States Lawful Permanent Resident since November 23, 1965.

- Copies of [redacted] identity and residence documents, which include: her California Identification Card, showing her residence in El Monte, California; her Permanent Resident Card, showing that she has been a United States Lawful Permanent Resident since March 27, 1990; her Social Security Administration earnings record, showing that she has been employed in the United States from 1979 to 1989; and her Form W-2, Wage and Tax Statements, and Income Tax Returns for 1981 through 1987.

The documents the applicant furnished on appeal serve to verify the identity and residence of [redacted] and [redacted]. However, their respective affidavits are without any probative value as corroborating evidence for the reasons stated above. Consequently, these documents do not lend any weight to the applicant's claim of continuous residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she provided sufficient evidence of her residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of her residence in the United States during the requisite period, various affidavits and employer letters. Only one of these documents, an affidavit from [redacted], was found to have any probative value. Ms. [redacted] states in her affidavit that she met the applicant at a Christmas holiday celebration in El Monte, California around December 1980. She states that she became good friends with the applicant and they have had close contact on a monthly basis since 1980. However, the probative value of this document is minimal because it fails to illustrate the frequency of Ms. [redacted] contact with the applicant during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is, at best, of little probative value, she has not furnished sufficient evidence to meet her burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of credible 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.