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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 137 10003

OFFICE: LOS ANGELES

Date: **SEP 04 2008**

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, 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 noted a discrepancy regarding the applicant's date of entry into the United States and further discussed the deficiencies in the applicant's supporting evidence. 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 disputes the director's conclusion, asserting that she has lived in the United States since prior to January 1, 1982. The applicant claims that assistance from bad counsel resulted in the discrepancy regarding her date of entry.

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.

In support of her Form I-687 application, the applicant provided three affidavits dated July 5, 2005 from [REDACTED] and [REDACTED] respectively. While each individual claimed to have known of the applicant's presence in the United States since prior to January 1, 1982, all three affidavits vary with regard to each affiant's account as to the applicant's date of entry into the United States. Specifically, [REDACTED] claimed that the applicant has been living in the United States since May 1981; [REDACTED] claimed that the applicant has been residing in the United States since October 1981; and [REDACTED] claimed that the applicant had been residing in the United States since August 1981. Thus all three affiants' accounts regarding the date the applicant commenced her U.S. residence are different from one another and from the applicant's own claim, as the applicant now asserts that she has been residing in the United States since June 22, 1981. 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). Additionally, neither [REDACTED] nor [REDACTED] provided the basis for their respective claims and none of the affiants provided any specific information regarding the applicant's purported residence in the United States during the statutory period so as to lend credibility to their statements. As all three affidavits lack probative value, they will only be afforded minimal weight as corroborating evidence.

The applicant also provided a letter dated June 11, 2005 from [REDACTED], who claimed that the applicant had been his employee for the last 24 years. Although [REDACTED] stated that he has "the greatest respect for [the applicant's] abilities," he did not state what duties the applicant performed, nor did he

provide the applicant's address during her period of employment or discuss the existence of employee records. See 8 C.F.R. § 245a.2(d)(3)(i). As a result of these significant deficiencies, [REDACTED]'s letter of employment will only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

The record shows that on July 6, 2005 the applicant was interviewed by a legalization officer with regard to her Form I-687 application. It appears that the applicant provided a number of additional documents at the time of her interview. Such documents include the applicant's birth and marriage certificates translated into English, a number of the applicant's federal U.S. tax returns (none of which included any of the years during the statutory period), and an employment letter dated October 7, 2004 from [REDACTED], president of [REDACTED], who claimed that the applicant was employed by his farm labor contractor from May 1, 1985 to May 1, 1986 and that the applicant purportedly performed 105 days of agricultural labor. Again, this employer failed to provide the applicant's address during her alleged employment and did not explain how he was able to recall the applicant's specific time period of employment given his claim that all payroll records were destroyed in a fire. Thus, [REDACTED]'s statements will only be afforded minimal evidentiary weight due the unknown, and possibly questionable, basis for the information offered.

Additionally, the record shows that the applicant made a number of changes to her initial application at the time of her legalization interview. First, the applicant altered her residence information to show that her residence at [REDACTED] Santa Ana, California commenced in August 1981 rather than April 1985, as originally indicated. Second, the applicant altered her employment information, which previously commenced with her alleged employment for Iresa Bros, Inc. in May 1985 to show earlier employment with [REDACTED], which she claimed commenced in October 1981.

Upon conducting a comprehensive review of the record, the director issued a decision dated December 11, 2006, concluding that the applicant failed to establish eligibility for temporary resident status. The director specifically noted the discrepancy between the information the applicant initially provided in her Form I-687 and that which she subsequently claimed during her legalization interview with regard to her initial residence in the United States. The director also pointed out that in the Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, the applicant stated (at Part 3, No. 19) that she first arrived to the United States in January 1986.

On appeal, the applicant reasserts her claim that she has resided in the United States continuously since prior to January 1, 1982 and specifically states that she first entered the United States on June 22, 1981. It is noted, however, that this new date of entry is entirely inconsistent with the information the applicant initially provided in her Form I-687 and with the subsequent information she later provided at her legalization interview. This most recent claim is also inconsistent with the claims made by the three affiants whose statements were discussed above. These considerable inconsistencies with regard to the applicant's date of entry further detract from the credibility of the applicant's claim. *Matter of Ho*, 19 I&N Dec. at 591.

The applicant goes on to provide the list of her U.S. residences since her alleged arrival to the United States in June 1981 as she now claims. However, instead of offering information to clarify the confusion,

the applicant only perpetuates more confusion by altering her prior statements yet further. Specifically, the applicant now claims that from June 1981 to December 1989 she resided at [REDACTED], Santa Ana, California. It is noted that the applicant's prior statements show her as having resided at [REDACTED] Santa Ana California and none of her earlier statements suggest that she resided in the United States prior to August 1981.

Next, the applicant provides inconsistent information with regard to her claimed departures from the United States. While she initially claimed only two absences in No. 32 of her Form I-687 application, she now claims on appeal that she was absent a total of three times—twice in 1985 and once from December 1987 to January 1988. However, further review of the translated birth certificates of the applicant's children undermines both of the applicant's claims. Specifically, the applicant's first child, [REDACTED], is shown as having been born in Mexico on August 22, 1981. If the applicant had first entered the United States on June 22, 1981, as she now claims, it is unclear why she did not reveal her subsequent absence, which would have had to have occurred in order for her to have given birth to her child in Mexico. The birth certificate belonging to the applicant's second child, [REDACTED], also shows that she was born in Mexico on June 8, 1983, which too is inconsistent with the applicant's claims regarding her departures from the United States. According to the applicant, her first departure from the United States did not occur until 1985. However, according to the contemporaneous evidence submitted in connection with the applicant's Form EOIR-42B, the applicant would have had at least two absences in addition to those she has revealed on her Form I-687 application and on appeal.

While the applicant offers a confusing explanation for the inconsistencies, claiming that she was the victim of inadequate counsel who made the claim on the Form EOIR-42B with regard to the applicant's initial date of entry into the United States, this does not account for the numerous other anomalies discussed above. Thus, even if the AAO opted to focus its attention away from the information offered in the applicant's EOIR-42B, the record is fraught with inconsistent claims made by the applicant and other third parties who attested to the applicant's U.S. residence during the statutory period.

Lastly, the applicant offers an additional employment letter dated January 9, 2007 from [REDACTED] who now claims that the applicant worked for him at his residence since August 1981 and states that the applicant currently resides at [REDACTED] Santa Ana, California. However, the information offered by [REDACTED] does not repair the damage done to the applicant's credibility by the various discrepancies discussed above. Rather, [REDACTED]'s claim that the applicant currently resides at [REDACTED] Santa Ana, California is inconsistent with the applicant's own claims, which indicate that the residence cited by [REDACTED] was her first residence in the United States rather than her current one. Additionally, the applicant previously claimed that her employment for [REDACTED] commenced in October 1981 rather than August 1981 as claimed by the employer.

In summary, the applicant has provided documentation that is virtually lacking in probative value and is further undermined by the applicant's own inconsistent and perpetually changing claims. The absence of sufficiently detailed and credible 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 previously stated, 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 numerous contradictory statements on her applications 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.

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