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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: EL PASO Date: SEP 05 2008

MSC-05-228-10240

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, El Paso. 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. Specifically, the director noted that the evidence submitted lacked sufficient detail to establish continuous residency for the requisite period. The director also noted inconsistencies in the record which cast doubt on the reliability of the evidence submitted. 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 has submitted sufficient evidence to establish continuous residency for the requisite period in the form of affidavits. She also submitted a Form I-690 Application for Waiver of Grounds of Inadmissibility based upon her admission that she provided "false and misleading information to obtain immigrant border crossing cards issued in 2002, March 23, 1982, and August 29, 1985." Through counsel, the applicant admits in her brief in support of the waiver application that "this false and misleading information caused the applicant to become inadmissible under Section 212(a)(6)(C)(i)."

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 is eligible for the benefit sought and 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 16, 2005. A review of the record reveals that the applicant submitted the following documentation in support of her application.

- A declaration from [redacted] who stated that she has known the applicant since 1980 and that they used to live and work in the same place. The declarant does not indicate under what circumstances she met the applicant in 1980, how she dates her acquaintance with the applicant, where the applicant resided in the United States, or how frequently she

had contact with her. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that she entered the United States prior to January 1, 1982 and resided continuously in the United States for the requisite period.

- A declaration from [redacted] who stated that he has known the applicant since 1981 and she has been living in El Paso since that time. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates her acquaintance with the applicant, where the applicant resided in the United States, or how frequently he had contact with her. Like the declaration above, this statement has minimal probative value in supporting the applicant's claim that that she continuously resided in the United States for the duration of the requisite period.

- A declaration from [redacted] who stated that he has known the applicant since 1979. He provides no additional relevant information. The declarant does not indicate under what circumstances he met the applicant in 1979, how he dates his acquaintance with the applicant, where the applicant resided in the United States, or how frequently he had contact with her. Like the declaration above, this statement has minimal probative value in supporting the applicant's claim that she continuously resided in the United States for the duration of the requisite period.

- Declarations from and [redacted] husband and wife, who stated that they met the applicant in 1981 when she was working for [redacted] as a cook. The applicant listed on her Form I-687 application as her employer from January 1981 until October 1981, thus substantiating the information provided by the declarants. However, neither [redacted] nor [redacted] indicate how frequently they have seen the applicant since 1981 or where the applicant resided during the relevant period.

- A declaration from who stated that she has known the applicant since 1979 and that the applicant has lived in El Paso since that time. She also indicated that she sees the applicant almost on a daily basis. She provides no additional relevant information. The declarant does not indicate under what circumstances she met the applicant in 1979, how she dates her acquaintance with the applicant, where the applicant resided in the United States. Again, this statement has minimal probative value in supporting the applicant's claim that she continuously resided in the United States for the duration of the requisite period.

- Declarations from [redacted] and her ex-husband, [redacted] who all state that the applicant lived and worked with their family from November 1981 until August 1991 when the family moved to Arizona. [redacted] and [redacted] daughter also states that the applicant "maintained a household and family of her own" during the time that she lived with them. This statement casts doubt on the applicant's assertion that she resided in El Paso permanently. It is also contradicted by the applicant's testimony provided at her

December 8, 2005 interview with CIS officers in which she stated that she "returned home to Mexico every weekend." Also, when asked "have you ever lived in the United States permanently," the applicant replied "no." 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. Furthermore, the applicant's youngest child, [redacted], was born in Mexico on March 6, 1986. This further diminishes the credibility of the declarant's statements that the applicant resided permanently in their home.

- An affidavit from [redacted], who indicated that she met the applicant in 1979 at a family party. She provides no additional relevant information. The declarant does not indicate how she dates her acquaintance with the applicant, or where the applicant resided in the United States. Again, this statement has minimal probative value in supporting the applicant's claim that she continuously resided in the United States for the duration of the requisite period.

- A declaration from who indicated that she met the applicant in 1980 "in the plaza." She provides no additional relevant information. The declarant does not indicate under what circumstances she met the applicant in 1980, how she dates her acquaintance with the applicant, where the applicant resided in the United States. Again, this statement has minimal probative value in supporting the applicant's claim that she continuously resided in the United States for the duration of the requisite period.

Noting the deficiencies described above, the director denied the application on August 28, 2006. He also stated in the denial that the applicant's record contains two nonimmigrant border crossing cards issued on March 23, 1982 and August 29, 1985 respectively. The director noted that in order to obtain the nonimmigrant border crossing cards, the applicant must have provided documentation establishing permanent residence in Mexico. The director explained that if the applicant procured the border crossing cards by providing false or misleading documents, then the applicant may be inadmissible to the United States pursuant to Section 212(a)(6)(C)(i). The director noted this inconsistency in addition to the separate grounds of denial based upon the applicant's failure to establish continuous residency in the United States for the duration of the requisite period.

On appeal, through counsel, the applicant admitted that she provided "false and misleading information to obtain immigrant border crossing cards issued in 2002, March 23, 1982, and August 29, 1985," and that "this false and misleading information caused the applicant to become inadmissible under Section 212(a)(6)(C)(i)." The adjudication of the Form I-690 waiver is not within the jurisdiction of the AAO. However, as noted above, the director has set a

legitimate basis for the denial apart from the issue of the applicant's possible fraud and/or misrepresentation for which the applicant now seeks a waiver.

In summary, the applicant has failed to establish through reliable and credible evidence that she resided continuously in the United States for the duration of the requisite period, and she has provided inconsistent information regarding the dates of her permanent residence which are noted above.

Therefore, 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 he 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--, 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.