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U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED] MSC-05-258-10527

Office: LOS ANGELES

Date: **SEP 15 2009**

IN RE: Applicant: [REDACTED]

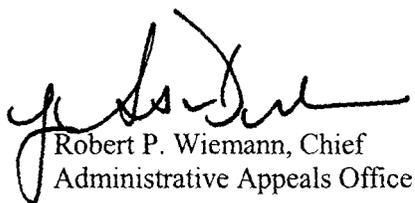
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 addresses the discrepancies cited in the denial notice.

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 June 15, 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 in Glendale, California from October 1981 until February 1983 and Los Angeles, California from February 1983 until May 1989. At part #33, she showed her first employment in the United States to be as a live in caregiver for [REDACTED] in Sunland, California from September 1987 until May 1991.

The applicant submitted as corroborating evidence of her residence in the United States during the requisite period, three fill-in-the-blank affidavits. Notably, these documents show that they have been altered using correction tape. The affidavits are as follows:

- An affidavit from [REDACTED], dated May 25, 2005, which in pertinent part provides that he has personal knowledge that the applicant resided in the United States at [REDACTED], Los Angeles, California from 1983 until 1989. The affidavit further provides that the applicant is his sister-in-law and they lived together at the same house and apartment in La Palma and Los Angeles. Notably, both of these assertions appear to have been altered with correction tape. Furthermore, the affidavit does not provide any details on their living

agreement or arrangement during the requisite period. Nor does it provide the address of the residence they purportedly lived in together 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 May 25, 2005, which in pertinent part provides that she has personal knowledge that the applicant resided in the United States at [REDACTED] Los Angeles, California from February 1983 until May 1989. The affidavit provides that [REDACTED] is able to determine the date of the beginning of her acquaintance with the applicant in the United States because the applicant is very close with her. Notably, [REDACTED]'s assertion that the applicant resided at [REDACTED] from February 1983 until May 1989 appears to have been altered with correction tape. Furthermore, this affidavit fails to offer any details on how [REDACTED] and the applicant first became acquainted with each other. It also fails to illustrate the frequency of contact they maintained 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 May 25, 2005, which in pertinent part provides that she knows the applicant resided at [REDACTED] Glendale, California from October 1981 until February 1983. The affidavit indicates that [REDACTED] is the wife of the applicant's cousin. Notably, [REDACTED]'s assertion that the applicant resided at [REDACTED] from October 1981 until February 1983 appears to have been altered with correction tape. Furthermore, the affidavit fails to establish the origin of the information [REDACTED] has attested to. The affidavit does not explain how [REDACTED] and the applicant first became acquainted with each other. It also does not illustrate the type of contact they maintained 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 August 21, 2006, the director issued a notice to deny the application. The director noted that the applicant amended her Form I-687 to show she was absent from United States from February 1988 until April 1988. The director determined that although the applicant testified she was employed from 1981 until 1988 as a caregiver with [REDACTED] nursing home in Shadowhills, her Form I-687 states that she worked for [REDACTED] in Sunland, California from September 1987 until May 1991. The director determined that the applicant's Form I-687 describes her as a live-in caregiver; however she has not listed Sunland as one of her residences. The director further determined that the applicant submitted affidavits that have all been altered in some manner. The director determined that the affidavits do not provide specific details on the applicant's relationship to the affiants and their ability to attest to her ongoing residence in the United States. The director concluded that the applicant failed to meet her burden of proof by a preponderance of the evidence that she has resided in the United States for the requisite period.

On appeal, the applicant asserts that on her application she wrote her departure as April 1988 until June 1988. The applicant states that due to the passage of time she “got mixed-up with the date.” The applicant states that she worked “twelve to sixteen hours” at [REDACTED] in Sunland, California. The applicant states that she rented an apartment and her correspondence was forwarded to her addresses in Glendale and Los Angeles. The applicant states that her documents, passport and receipts were not returned by the person who offered to help her during the Amnesty Program. The applicant states that she has submitted attestations from acquaintances that have knowledge of her entry and physical presence in the United States since 1981. The applicant states that since she has arrived in the United States she has worked as a caregiver and is being paid cash. In addition, the applicant submits her affidavit entitled, “Affidavit of Lost Passport.” The applicant asserts that in June 1988 she gave her passport and documents to a paralegal to process her “legal immigration status.” The applicant states that she paid the paralegal to “expedite the processing.” The applicant indicates that the paralegal subsequently failed to answer her calls, and she can no longer locate him.

The applicant’s assertions on appeal do not overcome the basis for denial. 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 established that she has resided 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, three affidavits that appear to be altered with correction tape. The affidavits lack considerable detail on the affiants’ relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. 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 without any 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.