U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: SEP 18 2008

MSC 06 031 13311

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.

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, New York. 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 has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that her application for temporary resident status should be granted.

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 has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

WITNESS STATEMENTS

- [redacted] submitted a sworn statement wherein she stated that she has known the applicant since December of 1980, that she met the applicant at a Christmas party, and that the two visit frequently and have remained close friends.

- [redacted] submitted a sworn statement wherein he stated that he has known the applicant since 1982. The witness stated that he was the applicant's boss in 1980. The applicant did not list any employment in 1980 on the Form I-687, nor did she provide proof of employment with this witness.

- [redacted] submitted three sworn and/or notarized statements wherein he stated that he has known the applicant since 1982. Mr. stated that he and the applicant have remained friends since they first met.

- [redacted] submitted two sworn statements wherein she stated that she has known the applicant since 1982. The witness provided no additional relevant information.

- provided a sworn statement wherein she stated that she has personal knowledge that the applicant has resided in New York from 1980 until the date of the witness statement (April 10, 1990). The witness stated that she and the applicant are good friends and "used to work in the same place."

- [redacted] provided a sworn statement wherein she stated that she has personal knowledge that the applicant has resided in New York from 1980 until the date of the witness statement (April 9, 1990). The witness stated that she has known the applicant "for the last 9 years and visit her frequently."

- provided a sworn statement wherein he stated that he has known the applicant since 1983. The witness provided no additional relevant information.

Although the applicant has submitted several sworn witness statements in support of her application, the applicant has not established her 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 witness statements provide generally that the witnesses have known the applicant since 1980, or some lesser portion of the requisite period, and that the applicant has been a resident of the United States since the witnesses met the applicant. The witness statements provide no additional relevant information. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Employment

- submitted an unsworn statement on behalf of the Love Bird Restaurant wherein she stated that the applicant was employed by the restaurant from 1980 until 1984. The statement provides no additional information about the specifics of employment, and the applicant does not list this claimed employment on the Form I-687. The statement is not on

business letterhead, but lists an address of [redacted]., Bryan, CT 20811 as the letterhead and business address. It is important to note that the zip code listed for this organization, 20811, is a zip code for Bethesda, MD. Further, the applicant stated, under penalty of perjury on the Form I-687, that she was a resident of New York during the period of claimed employment.

- [redacted] bookkeeper, provided an unsworn statement wherein she stated that the applicant was employed by Hudson Photographic Industries, Inc., P.O. Box 227, Irvington, NY from January 17, 1987 until the date of the statement (March 15, 1990). The statement provides no additional information about the specifics of the employment, and the applicant does not list this claimed employment on the Form I-687. Counsel stated, on appeal, that the employment listed by the applicant on the Form I-687 (Las Camaras from 1982 – 1988) and Hudson Photographic Industries, Inc. are the same business. The record contains no proof of any such business association, and statements of counsel are not deemed evidence in these proceedings. Further, the applicant indicates on the Form I-687 that she stopped working for Las Camaras in 1988 and began working for Presto Plastic in Stanford, NY. This is inconsistent with the witness statement which indicates that the applicant worked for Hudson Photographic Industries, Inc. from 1987 until at least March 15, 1990.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The employment statements provided are of little evidentiary value as they do not provide any of the information required by the above cited regulation. The evidentiary value of the statements are further diminished because of the inconsistencies herein noted.

Attestation

[redacted], Pastor, Our Lady Of The Rosary church, provided an unsworn statement wherein he stated that the applicant is a registered member of his parish. The statement provided no additional information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

(v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official (whose title is shown);

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during membership period;

(E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

The attestation/unsworn statement provided does not state the inclusive dates of membership for the applicant, state the address where the applicant resided during any membership period, establish how the statement author knows the applicant, or establish the origin of the information being attested to. The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. As previously stated, pursuant to 8 C.F.R. § 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 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 during the requisite period.

Therefore, based upon the foregoing, the applicant 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.