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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUL 31 2009

MSC-06-101-25972

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.

John F. Grissom
Acting 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, reopened on motion, and denied by the Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 record of proceeding shows that the Form I-687 application was initially denied by the director due to abandonment, in that the applicant had failed to respond to the Request for Evidence. The record also shows that the director withdrew the decision and reopened the application for consideration and review; having determined that the application was denied prematurely.

The director subsequently denied the application after determining 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 noted the multiple contradictions and inconsistencies in the applicant's statements and the evidence she submitted regarding her school attendance and her absences from the United States during the requisite period. The director also noted that the evidence and affidavits submitted by the applicant was insufficient to support the applicant's claimed eligibility for the immigration benefit sought. 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 qualifies for temporary resident status in that she has continuously resided in the United States since before January 1, 1982, and she asks that her application be reconsidered. The applicant does not submit any new evidence on appeal.

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. *See* 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.

Here, the evidence submitted is relevant, probative and credible.

The applicant testified under oath and under penalty of perjury during her immigration interview that she attended Fulton Middle School in 1981 and 1982. The applicant submitted photocopies of a student identification card from Fulton Junior High School dated 1980 to 1981 and an immunization record from the County of Los Angeles Health Department dated October 1, 1980 bearing the name [redacted] with a date of birth of August 2, 1965.

The applicant submitted the following evidence:

- Money order receipts bearing the applicant's name and dated March and November 1984, July 1986.
- Copies of receipts from U.S. Postal Service for registered mail postmarked March and October 1984 and June 1986.
- A copy of a receipt for a California Drivers License application fee bearing the applicant's name and dated July 12, 1984.
- Copies of bank statements from Camino Savings and Loan bearing the applicant's name and dated August and November 1983 and October 1984
- Copies of unidentifiable and unverifiable photographs.
- A copy of the applicant's identification card from Van Nuys Community Adult School whose dates are not discernable.

The applicant submitted the following attestations as evidence:

- An affidavit from [redacted] who stated that she employed the applicant as a housekeeper from July 10, 1980 to July 1991, the date she signed the affidavit and that she worked every other week.

- An affidavit from [redacted] who stated that he has employed the applicant as a housekeeper from 1981 to July 19, 1991, the date he signed the affidavit.

  An affidavit from [redacted] who stated that she employed the applicant as a housekeeper from 1980 to July 17, 1991, the date she signed the affidavit.

- A declaration from [redacted] who stated that he has employed the applicant as a part-time housekeeper since 1988.

- A declaration from [redacted] who stated that she met the applicant in 1981 when she worked for her parents as a housekeeper on a weekly basis, and that she has employed the applicant as a housekeeper since 1990.

- An undated declaration from [redacted] who stated that she has employed the applicant as a housekeeper for the past ten years.

- A declaration from [redacted] who stated that she is the applicant's sister and that the applicant came to the United States and lived with her in Van Nuys, California in July of 1980. The declarant also stated that she enrolled the applicant in school, but that the applicant preferred to stay at home helping her with the housework.

- A declaration from [redacted] who stated that he has known the applicant since 1980 when he first began dating her sister, his future wife and that the applicant was present when his children were born in August 1982 and September 1986.

- A declaration from [redacted] who stated that he has known the presence of the applicant in the United States since 1981 and that the applicant's sister was his girlfriend when he first met her and that the applicant is now his sister-in-law.

- A declaration from [redacted] who stated that he first met the applicant in 1980 and at that time he was dating her sister, his future wife. He also stated that the applicant was a bridesmaid at his wedding in May of 1982.

- A translated declaration from [redacted] who stated that he has known the applicant since 1980 and that he met her through his brother's girl friend who is the applicant's sister. He also stated that they lived in the same apartment building at [redacted]

The contemporaneous documents submitted by the applicant appear to be credible. The letters, declaration and affidavits submitted on the applicant's behalf appear to be credible and amenable to verification. The applicant's school records appear to be authentic.

The director has not found that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present Form I-687 application filed with the United States Citizenship and Immigration Services; that any inconsistencies exist within the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E- M--*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* At 79. The documents that have been provided in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that she entered the United States before January 1, 1982 and that she has maintained continuous, unlawful residence status from such date through the date that her parents were dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

Thus, the applicant's appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.