U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 03 2009

MSC 06 090 12851

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.

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 by the Director, New York. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. In so finding, the director noted [redacted] attested to a continuous patient relationship with the applicant between 1981 and 2000 at her neighborhood health center in Dorchester, Massachusetts, until the applicant moved to New York. However, the applicant claimed that she had resided in New York at several residences since coming to the United States, but had never indicated that she had resided in Massachusetts.

On appeal, counsel asserts there is an explanation for the applicant's inconsistencies of residence. Counsel further states that the preparer of her application failed to indicate that she lived in both states, New York and Massachusetts and that the applicant, who is illiterate, failed to catch the error. Counsel indicates that in 2000, she "renounced" her second domicile of Massachusetts thereby establishing New York as the sole remaining domicile. Counsel explains that on discovering the inconsistencies, the reviewing officer failed to give the applicant an opportunity to present additional evidence to clarify the two domiciles.

In matters filed with United States Citizenship and Immigration Services (USCIS), applicants may be represented by an attorney, law students and law graduates not yet admitted to the bar working under the supervision of others, by an accredited representative of a recognized organization. They may also be represented by reputable individuals who have submitted a written declaration that he or she is appearing without direct or indirect remuneration. 8 C.F.R. § 292.1(a)(3)(ii). Any appeal or motion based upon a claim of ineffective assistance of counsel requires, as a threshold requirement, that the person be authorized to represent an applicant before USCIS. Therefore, the applicant's claim of ineffective assistance has no bearing in this case because she has not established that the person who purportedly gave her incorrect advice was eligible to represent her in this matter. The record is inconclusive as to the advice that the assisting person may have provided or failed to provide the applicant and does not establish that a lack of advice caused her not to file an accurate application.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

Even if the director has some doubt as to the truth, if the applicant 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 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.

The applicant furnished two fill-in-the blank declarations. The first declaration from [redacted] is accompanied by a copy of her New York State identification card. The form states that [redacted] first met the applicant in December 1982. The second completed for is on behalf of [redacted] with a copy of her account information from a firm named TransUnion showing her address in Bronx, New York. It states that she first met the applicant in June 1987. Therefore, neither [redacted] nor [redacted] is able to confirm that the applicant has been residing in this country since before January 1, 1982. The two declarations are not signed by the declarants, thus detracting from their credibility. Also, the forms themselves indicated that they should be filled out only to gather information about persons who will later sign declarations.

The record also contains a letter from [redacted] dated April 12, 2006, indicating that the applicant began care with [redacted] Neighborhood Health Center in Dorchester, Massachusetts, in 1981 and that she continued to follow up in this clinic regularly until she moved to New York in around 2000. On her Form I-687, the applicant stated that she lived at four addresses in Bronx, New York, from 1981 through December 29, 2005. The letter from [redacted] is of little value as the applicant did not reside near Dorchester, Massachusetts, during the requisite period. On appeal, counsel states that the preparer of his client's application failed to

indicate that she lived in both New York and Massachusetts and that the applicant, who is illiterate, failed to catch the error. Counsel indicates that in 2000, she "renounced" her second domicile of Massachusetts thereby establishing New York as the sole remaining domicile. Counsel explains that on discovering the inconsistencies, the reviewing officer failed to give the applicant an opportunity to present additional evidence to clarify the two domiciles. Counsel did not offer any evidence in support of his assertions. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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