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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: HOUSTON Date: NOV 18 2009

MSC 05 050 10070

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

Perry Rhew
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, Houston, Texas, and 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 provides explanations for the inconsistent affidavits and testimony.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit from [redacted], who attested to the applicant's residence in the United States since 1981. The affiant indicated that he was a coworker of the applicant's husband in Houston at the time. The affiant indicated that in 1984 the applicant and her spouse shared an apartment with him and "all the contracts were under my name."
- An affidavit from [redacted] who attested to the applicant residing at [redacted] in 1981, and to her departures to Mexico to give birth to her children. The affiant indicated that since that time they have continued to visit each other's families.
- An affidavit from [redacted] who attested to the applicant's residence in the United since 1981 and to the applicant's departures to Mexico in 1986 and 1987. The affiant indicated that he sees the applicant almost every week as he is married to the sister of the applicant's husband.

  An affidavit from [redacted] who indicated that he met the applicant at a family reunion when she first arrived in the United States in 1981.

  An affidavit from [redacted] who indicated that she has known the applicant since 1981 and that the applicant was in her employ as a babysitter for three years. The affiant attested to the applicant's moral character.

- An affidavit from [redacted] who indicated that the applicant resided with him at [redacted] from July 1981 to March 1984. The affiant indicated that the rent and utility bills were in his name.
- A letter dated October 15, 1999 from [redacted] in Houston, Texas, who indicated that he has known the applicant since 1982 when the applicant visited the church. The affiant indicated the applicant visited the church a few more times and "I went to their home and started to visit them frequently." The affiant indicated that since that time the applicant and her family have "become regulars in our services."
- An affidavit from [redacted] who indicated that she has been acquainted with the applicant in the United States since 1983.
- An affidavit from [redacted], who indicated that she has been acquainted with the applicant in the United States since 1984 and that the applicant was in her employ for two years as a housekeeper.
- An affidavit from [redacted] who indicated that he has been acquainted with the applicant since 1985 as the applicant rented an apartment from his brother, [redacted] The affiant indicated that he has remained good friends with the applicant since that time.
- An affidavit from [redacted] who indicated that she has been acquainted with the applicant since May 1988. The affiant indicated that the applicant and her spouse rented an apartment from her.

The applicant, in her declaration, asserted she first arrived in the United States in July 1981 and resided with her spouse in Houston, Texas at [redacted], she was employed as a babysitter from 1981 to 1984 and as a housekeeper from 1984 to 1989 for different individuals. The applicant asserted, "unfortunately I had loss contact with all this persons mainly because I was working for brief periods of time with each of them."

On her Form I-687 application, the applicant listed her absences from the United States as follows:

October 11, 1984 to October 25, 1984 – to visit family in Mexico
October 2, 1986 to November 2, 1986 – to give birth to son in Mexico
December 15, 1987 to January 3, 1988 – to visit family in Mexico
March 15, 1988 to April 14, 1988 – to give birth to son in Mexico

On April 19, 2006, a Form I-72 was issued requesting the applicant to submit the birth certificates of all her children. The applicant, in response, provided four birth certificates reflecting her children's dates of birth as September 27, 1977, September 24, 1979, October 17, 1986, and March 31, 1988.

On November 8, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that U.S. Citizenship and Immigration Service (USCIS) was only able to contact three of eleven affiants; [redacted] and [redacted] The director indicated:

[redacted] stated she first met you around eight years ago, but was not exactly sure. She stated she met you when you rented an apartment from her. She also stated that at the time, your sons were small but already attended school. She claimed they were not infants or toddlers. However, this contradicts the affidavit provided by her, which states that you rented an apartment from her in May 1988. In May 1988, your son, [redacted] was a toddler, and your son, [redacted] was a newborn.

In addition, [redacted] claimed he first met you in Mexico through your husband. He also stated he came to live in the United States around 1982, and that you came later. He stated he did not remember the exact year you came to live in the United States. The affidavit signed by him, however, states he has known you since 1985. [redacted] claimed he met you in Mexico and has known you for practically all of his life because your husband is a relative of one of his family members. He stated he came to live in the United States in 1983, or 1984, when he was around sixteen or seventeen years old. He also stated he did not know what year you came to live in the United States. However, the affidavit provided by him, states he first met you when you "first arrived in the United States back in 1981."

The applicant was also advised that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through the date she attempted to file her application.

The applicant, in response, reasserted the veracity of her claim to have entered the United States in July 1981. In regards to the affiants that USCIS was not able to contact, the applicant asserted, "the numbers to a lot this people are still good and you will be able to reach them early in the morning or late in the afternoon." In regards to the statements made by [redacted] and [redacted], the applicant asserted, "I don't know if it is humanly possible for someone to remember with exact details things that happened to you twenty six years ago. I think that the Service Center should be a little more understandable to this situation." The applicant submitted:

- An affidavit from [redacted] who indicated that he met the applicant in November 1981 and attested to the applicant's moral character.
- An affidavit from [redacted] who indicated that he met the applicant in Houston, Texas in December 1981 at a mutual friend's ([redacted]) home. The affiant attested to the applicant's employment with [redacted] and to her absences to Mexico from 1984 to 1988.

The director, in denying the application, noted that several attempts were again made to contact the affiants at the telephone numbers provided, but two of the numbers were disconnected and no one answered the remaining numbers including the telephone number provided by [redacted] The director noted that a Service Officer did speak to [redacted] who indicated that he met the applicant in Mexico and that the applicant came to the United States around 1980 or 1981. The

director noted that the applicant's response to the contradicting affidavits did not accurately address the discrepancies. The director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on December 11, 2007.

In regards to the affidavit from the applicant, on appeal, asserts, the affiant correctly described their relationship in 1988, "but apparently when speaking to someone from the Immigration Service recently regarding our relationship, she was either nervous and confused or was reluctant to confirm that she knew me for so long because she thought she could get in trouble with your agency for helping an undocumented alien."

In regards to the affidavit from [redacted], the applicant asserts that the affiant apparently could not recall when she arrived in the United States. The applicant states, "[a]ll this can be attributed to loss of memory, and the obvious inability to recall with certain accuracy dates and places which occurred now more than 28 years ago."

The statements issued by the applicant have been considered. However, the AAO does not view documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application.

The letter from has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. In addition, the applicant did not list any affiliation with a religious organization during the requisite period at item 31 on her Form I-687 application.

in his affidavit, indicated that he shared an apartment with the applicant in 1984, but failed to provide the address of residence.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. The applicant, however, has not provided any evidence from [redacted] and [redacted] to support her statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The remaining affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails 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 he 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.