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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: FEB 16 2010

MSC 06 098 10521

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, counsel asserts, there are no contradictions and inconsistencies in the affidavits or statements provided by the applicant. Counsel asserts that the adverse finding is not supported by specific cogent reasons that bear legitimate nexus to the finding and is based on speculation and conjecture which the applicant has adequately explained and addressed. Counsel asserts that the applicant has provided sufficient evidence to establish her unlawful presence and residence in the United States during the requisite period. Counsel asserts that the director has not given fair consideration and applied a correct standard while adjudicating the 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 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.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At the time of her LIFE interview on May 6, 2005, the applicant indicated she entered the United States in February 1981 with two other individuals who were friends of her father; she was employed by [redacted] at a cleaners in 1996 and 1997; resided with [redacted] for five years and has not spoken to [redacted] in two to the three years; departed the United States in 1986 in order to get married in India and returned three weeks later; and departed the United States in July 1987 as her father was sick and to have her child. The applicant indicated she was never issued a visa; she only used her passport which contained alterations.

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

- An undated statement from who indicated that he has known the applicant since 1981. The affiant indicated that the applicant worked at the washerteria where he attended on a daily basis. The affiant attested to the applicant's moral character.
- A photocopied affidavit notarized May 17, 2002, from [redacted] who indicated that he has known the applicant since 1981. The affiant indicated that he leased his premises, [redacted] to the applicant and her spouse since 1981.
- A photocopied affidavit notarized July 8, 2005, from [redacted] who indicated that he "has seen [the applicant] in the neighborhood since at least 25 years when she looked like a teenager." The affiant indicated that he would help the applicant sporadically by allowing her to clean windows and the parking lot or other random chores when the applicant did not have money for food and in return he allowed the applicant to have some groceries. The affiant indicated that in 1992, he was approached by the applicant's husband to rent his property "to run a dry-cleaner." The affiant, indicated, "I am sorry if I mislead anyone or misstated any of the above stated facts."
- A photocopied affidavit notarized May 15, 2002, from who indicated that he has known the applicant since February 1981. The affiant indicated that he used to be a manager at [redacted] located in Port Arthur, Texas and the applicant and her spouse "use to work as a maintenance helper and was self employed in his wash and fold service at my washateria."
- A photocopied affidavit notarized July 8, 2005, from [redacted] who indicated that he has known the applicant since February 1981. The affiant indicated that the applicant resided in his home "for several months at a time in 1981 and then for a few days at a time later," and the applicant would cook and clean his house and sometimes he would find some work outside of his home. The affiant indicated that he introduced the applicant to her spouse and she became self-sufficient after her marriage. The affiant indicated that after the applicant became a mother his contact with her was minimal and the last time he saw the applicant was in May 2002 when he gave her the affidavit.

The applicant asserted that she resided with [redacted] for five years and worked in [redacted] washateria folding clothes. The applicant indicated that she also did housework in the affiant's home. The applicant indicated, "I would go to different storeowners which were close to his home [redacted] and ask them for work and they would allow me to do small chores and pay me pocket money or some goods form [sic] their stores."

At the time of her legalization interview on October 18, 2006, the applicant indicated that she entered without inspection through the Canadian border on February 19, 1981 with two other individuals who were friends of her father. The applicant indicated that she was taken to Houston, Texas where her father had arranged for her to reside with [redacted]. The

applicant indicated that she resided with [redacted] from 1981 to 1989. The applicant indicated that she never attended school in the United States; she cooked for [redacted] and cleaned [redacted] home. The applicant indicated that she met her spouse at the age of 15 through [redacted] The applicant indicated she did not seek medical treatment in the United States and returned to India in 1987 when she was eight-months pregnant. The applicant indicated that her spouse met [redacted] in 1992 and they leased property from [redacted] for a dry cleaning business. The applicant indicated that she was absent from the United States in November 1986 for three weeks in order to get married and again in July 1987 to visit her ailing father and to give birth to her child.

On January 25, 2007, the director issued a Notice of Intent to Deny, which advised the applicant the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. Specifically, the affidavits provided by [redacted] and [redacted] were contradicting in nature.

[redacted] had indicated the applicant introduced her spouse to him; however, in her testimony, the applicant indicated that she met her spouse through the affiant when she was 15 years old. In addition, the affiant indicated that the applicant resided with him for several months in 1981; however, the applicant, in her testimony, indicated that she resided with [redacted] for eight years.

[redacted] in his initial affidavit, indicated that he had leased property to the applicant and her family in 1981; however, in his subsequent affidavit, the affiant indicated that sometime in 1992, the applicant's spouse approached him about renting his property. The applicant, in her testimony, asserted that her spouse met [redacted] in 1992. The affiant also failed to identify or provide the name of the employer who requested work on the applicant's behalf.

The director also advised the applicant that the affidavit from [redacted]. was unable to be verified as the telephone number listed did not include an area code.

The applicant, in response, asserted that there is no contradiction between her testimony and the affidavit from [redacted] as the affiant knew both her and her spouse in 1981 when they were single. The applicant asserted, "I was telling [redacted] that [redacted] and I finally got married." In regards to the length of time she resided at the affiant's home, the applicant asserted, "I lived with his family beginning 1981 and continued living with them off and on over the next 8 years. At the beginning I was with his family fulltime but as time went on, I would leave and come back to stay for short periods over the 8 years." The applicant submitted:

- An additional affidavit from [redacted] who indicated that he has known the applicant and her husband since 1981 as they were regular customers at his grocery store. The affiant indicated that the applicant "used to work for him part time cleaning windows, the parking lot and doing other chores. In return I would pay her some money and at times she got food and other groceries from my store." The

affiant indicated that his initial affidavit contained a typographical error as he leased his property to the applicant and her family in 1992.

- An additional affidavit from [redacted], who indicated that he met the applicant in 1981 at a washerteria in Port Arthur, Texas. The affiant provided the area code for his telephone number.
- An affidavit dated February 2007, from [redacted] who indicated that she has known the applicant for over 25 years. The affiant indicated she met the applicant at a washerteria and attested to the applicant's marriage in the mid-1980. The affiant indicated that the applicant's spouse also worked at the washateria as a maintenance person. The affiant indicated that she has remained in touch with the applicant since their first meeting.
- A statement dated February 21, 2007 from [redacted] who indicated that he has known the applicant since 1982 "when she used to attend our Indian cultural activities in Golden Triangle area." The affiant indicated that the applicant is an excellent [redacted]r and expert alteration lady.
- A statement dated February 20, 2007, from [redacted] who claimed to have known the applicant since 1981. The affiant indicated that the applicant "used to work at a washateria where I used to go sometimes. She used to wash and fold my clothes."
- A statement dated February 22, 2007, from [redacted] who indicated that he has known the applicant since late 1981 from the washateria in his neighborhood. The affiant indicated that the applicant's spouse "maintained the same [redacted]. I knew them individually when they worked together."

The director determined that the documents submitted did not establish the applicant's credibility and were insufficient to rebut the Notice of Intent to Deny.

The statements issued by the applicant and counsel have been considered. However, the AAO does not view the 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 applicant contends that she resided with [redacted] at his residence in 1981 and continued living with the affiant off and on over the next 8 years. The applicant, however, neither claimed on her Form I-687 application nor provided the addresses of residence she was residing at when she was not at the affiant's home.

Along with her LIFE application, the applicant submitted a Form 1040, U.S. Individual Income Tax Return, for 1987 signed March 30, 1988, and a letter from the Internal Revenue Service dated May 16, 1988 regarding an invalid social security number listed on the Form 1040. The applicant's address listed on both documents does not coincide with the address claimed by the applicant on her Form I-687 application.

The affidavit from [redacted] raises questions to its credibility as the applicant, on her Form I-687 application, did not claim to have been affiliated or associated with any organization, clubs during the requisite period.

The applicant, at the time of her interview, asserted that upon her return to the United States in November 1986, she began residing with her husband until 1990 and during this time her husband provided her with steady support. The fact that the applicant did not provide any evidence such as lease agreements, utility bills or an affidavit from her spouse attesting to her residence in the United States since 1986 raises questions of credibility regarding her continuous residence in the United States.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The affiants' statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which 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.

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.