U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

DATE: FEB 2 2 2012 Office: LOS ANGELES FILE: [redacted]

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.

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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on January 9, 2006. On March 30, 2007, the director denied the applicant class membership. The applicant appealed to the special master. On November 15, 2010, the special master granted the appeal and determined that the applicant was a class member. On May 13, 2011, the director denied the application and determined that the applicant failed to establish that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period.

On appeal, the applicant asserts that she has submitted sufficient evidence, and provided all requested originals.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See id.* and § 245A(a)(2)(A) of the Act.

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 established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided written statements from [redacted] None of the statements were signed, but the record contains photocopies of the declarant's identification cards, therefore they will be given nominal weight.

The record also contains photocopies of utility bills and statements for 1981, 1982, 1983, 1984, 1985, 1987, and 1988. In his request for evidence (RFE) dated April 18, 2011, the director asked for original utility bills. In response the director's RFE, the applicant stated that she had already submitted the utility bills and did not have them anymore. As noted by the director in his decision, the record contains no original utility bills. Further, the photocopies of the utility bills in the record contain no names or addresses and therefore cannot be attributed to the applicant or her family. These bills have no probative value.

The record contains Internal Revenue Service (IRS) Forms 1040 for the applicant's parents and for the applicant for the years 1981, 1982, 1983, 1984, 1985, 1986, and 1988. The record also contains a California Form 540 for 1987. The tax returns contain IRS stamps indicating that they were filed on May 9, 2011. The applicant also submitted documents that appear to be original IRS Forms W-2 for the years 1982 to 1988. In his RFE, the director requested IRS transcripts for the applicant's tax returns and a "written confirmation of dates worked from Target and Super Center Concepts." The applicant did not provide the documents requested. In response the applicant stated that it would take 30 days for an IRS transcript and instead submitted dated stamped IRS Forms 1040 as evidence that they were filed. The evidence submitted indicates that the IRS Forms 1040 were filed on May 9, 2011 and are therefore not evidence of the applicant's presence in the United States during the requisite period. The AAO notes that although the applicant states that she submitted original IRS Forms W-2, she listed the address for Target Corporation headquarters in Minnesota from the IRS Form W-2 on the Form I-687. The applicant did not provide the California location where she worked for Target Corporation. In addition, the applicant provided Forms W-2 for 1982, 1983, and 1984 but did not list any employment on the Form I-687 before 1985. Further, although the record contains Forms W-2 for the applicant from Super Center Concepts Inc., the applicant did not list Super Center Concepts Inc. as an employer in the Form I-687. The record contains no explanation regarding the inconsistent employment information.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO notes that the applicant was 13 years old in 1981 and there is no evidence in the record of proceeding of school attendance, vaccinations in the United States, or evidence of her care and financial support by an adult during this period.

Beyond the decision of the director, the AAO finds that the record of proceeding contains evidence that the applicant was arrested by the Hawthorne Police Department on May 27, 1996, and charged with *Shoplifting - M* (Agency Case No. 154099). The record of proceeding contains no dispositions for this charge.[1] One misdemeanor conviction would not disqualify the applicant.

On appeal, the applicant asserts that the special master granted her appeal because he "checked everything." The special master determined that the applicant was a class member. However, the special master did not make any findings related to the applicant's continuous residence.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. Therefore, based upon the foregoing, the applicant has failed to

[1] The applicant submitted a letter from the Superior Court, Southwest District dated December 14, 2006 stating that the applicant has never been to court in Los Angeles County.

establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.