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U.S. Citizenship
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Services

LI

[REDACTED]

FILE: [REDACTED]
MSC 06 073 12076

Office: LOS ANGELES

Date: AUG 14 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, 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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that denial of her application is wrong “because the officer that interviewed me is not telling the [truth].” The applicant provided a personal statement and a statement from Stephanie Aguilar, the person who served as her translator during her legalization interview.

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 (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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 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 (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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 12, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] Los Angeles, California” from December 1980 to October 30, 1987 and at [REDACTED] Los Angeles, California” from 1988 to December 29, 1990. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that she worked for [REDACTED] as a babysitter from 1980 to 1987.

At her interview with a CIS officer on April 25, 2006, the applicant stated that she first entered the United States without inspection in December 1980.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that he first met the applicant in 1984 at a dance. [REDACTED] further stated that he knew that the applicant entered the United States before 1982 because the applicant told him she had entered before 1982 in a casual conversation when they first met. [REDACTED] stated that he and the applicant went out two times, but after that he didn't see her again until 1995. However, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period. It is noted that the notes of the interviewing officer indicate that the applicant told her that she had been friends with [REDACTED] since 1992, not since 1984 as stated by [REDACTED] in his third party declaration.

The applicant also submitted a letter dated November 17, 2005, from [REDACTED]. [REDACTED] stated that the applicant worked for him as a babysitter from June 1980 to July 1988 and was paid in cash. This statement contradicts the applicant's statement on the Form I-687 that she worked for [REDACTED] from 1980 to 1987. Furthermore, [REDACTED] stated in his letter, "[REDACTED] husband worked with my company for several years in which any information needed do not doubt to call me at work or to my house." It is noted that [REDACTED] did not provide a work or home telephone number at which he could be contacted. [REDACTED] statement that the applicant's husband worked for his company for several years contradicts the applicant's statement on the Form I-687 that she has never been married.

The applicant included a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] who explained that the applicant is her sister-in-law, stated that she first met the applicant in 1986. [REDACTED] further stated that she and the applicant "lived together for some time and then she left. We see each other in family reunions and parties." However, [REDACTED] did specify the dates when she and the applicant lived together. It is noted that the notes of the interviewing officer indicate that the applicant told her that the applicant met [REDACTED] in 1987 or 1988, not in 1986 as [REDACTED] stated in her third party declaration.

The applicant also included a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that he first met the applicant in 1982 at her brothers' house. [REDACTED] further stated that he knew the applicant entered the United States before 1982 because her brothers told him that she entered the United States without inspection near San Ysidro, California before 1982. However, [REDACTED] did not provide specific verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate her claim. It is noted that the notes of the CIS officer indicate that the applicant told her that she and [REDACTED] had been friends since 1994 or 1995, not since 1982 as stated by [REDACTED] in his third party declaration.

The applicant provided a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that she met the applicant for the

first time in 1982 through her husband's friendship with the applicant's brothers. [REDACTED] further stated that the applicant told her that she had entered the United States without inspection prior to 1982. [REDACTED] indicated that she meets the applicant from time to time at family gatherings. However, [REDACTED] failed to provide any specific and verifiable such as the applicant's addresses during the requisite period to corroborate the applicant's claim. It is noted that the interviewing officer's notes indicate that the applicant stated she had been friends with [REDACTED] since 1994 or 1995, not in 1982 as stated by [REDACTED] in her third party declaration.

The applicant provided a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that he first met the applicant in 1982 when he was visiting her brothers. [REDACTED] further stated that he knows that the applicant entered the United States without inspection prior to 1982 because her brothers told him. However, [REDACTED] failed to provide specific and verifiable information such as the applicant's residences in the United States during the requisite period to corroborate her claim. It is noted that the notes of the CIS officer indicates that the applicant told her she had been friends with [REDACTED] since 1994, not since 1982 as stated by [REDACTED] in his third party declaration.

The applicant also provided a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that he first met the applicant in 1982 through her brothers. [REDACTED] further stated that he knew the applicant had entered the United States without inspection before 1982 because she told him she had. However, [REDACTED] did not provide any specific verifiable testimony such as the applicant's addresses during the requisite period to corroborate her claim. It is noted that the notes of the interviewing officer indicate that the applicant told her that she had been friends with [REDACTED] since 1993 or 1994, not since 1982 as stated by [REDACTED] in his third party declaration.

The applicant submitted a third party declaration in Spanish with English translation from Jose [REDACTED]. [REDACTED] stated that he first met the applicant in 1982 through his friendship with her brothers. [REDACTED] further stated that he knew that the applicant entered the United States without inspection before 1982 because the applicant told him so. However, [REDACTED] failed to provide specific verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate her claim. It is noted that the CIS officer's notes indicate that the applicant told her that she first met [REDACTED] in 1990, not in 1982 as stated by [REDACTED] in his third party declaration.

The applicant also submitted a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that he first met the applicant in 1982 at a family gathering. [REDACTED] further stated that he used to see the applicant at family reunions and visits with her brothers. However, [REDACTED] did not provide specific and verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate her claim.

The applicant included a third party declaration in Spanish with English translation from [REDACTED] one of the applicant's brothers. [REDACTED] stated that the applicant entered the United States before 1982 and had resided continuously in the United States since that time. [REDACTED] further stated that he and the applicant spent a lot of time together at parties and family reunions and they also lived together for a period of time. However, [REDACTED] did not specify when he and the applicant lived together.

The applicant also included a third party declaration in Spanish with English translation from [REDACTED]. [REDACTED] stated that she first met the applicant in 1987 at a party in Los Angeles and they have been friends for a long time. However, [REDACTED] did not provide any specific and verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate her claim.

The applicant provided a third party declaration from [REDACTED]. [REDACTED] stated that she first met the applicant in 1982 in Los Angeles because she was a friend of the applicant's family. [REDACTED] indicated that she knew the applicant entered the United States before 1982 because she was told so by the applicant's brothers. [REDACTED] secondhand knowledge has little corroborative value.

It is noted that the Spanish language third party declarations from the following people all appear to have been hand-written by the same person: [REDACTED]

[REDACTED], [REDACTED], and [REDACTED]. There is no indication in the record as to who actually filled out these third party declarations, but the fact that they were all filled out by the same person, rather than the individual who signed the declaration attesting to their knowledge of the applicant's residence in the United States during the requisite period, raises doubts from the credibility of these attestations.

On appeal, the applicant asserts that the CIS officer who conducted her interview "is not saying the truth of what I responded during my interview. She is changing all the answers that I gave by means of being able to excuse the denial of my case." The applicant provided a statement dated May 31, 2006, from [REDACTED]. [REDACTED] who served as the applicant's interpreter during the applicant's legalization interview, states that the CIS officer was "very demanding and due to her attitude made [REDACTED]" She further states:

Isabel answered promptly to her questions but under pressure everyone makes mistakes but not as many as [the CIS officer] points out. . . . Regarding the years Isabel answered each year specifically and did not give multiple years as stated by the interviewing officer.

In the absence of a transcript of the applicant's legalization interview, it is not possible to confirm or rebut the applicant's assertions on appeal. Nevertheless, even if the CIS officer's interview notes are not taken into consideration, there are still contradictions between the statements of some of the

individuals who provided third party declarations and the applicant's statements on the Form I-687. Additionally, none of the individuals who provided third party declarations provided specific verifiable information such as the applicant's addresses in the United States to corroborate her claim. Moreover, as previously stated, the fact that a large number of the Spanish language third party declarations appear to have been hand-written by the same person detracts from the credibility of these declarations.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory statements on her application and her reliance on documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.