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FILE: [REDACTED]
MSC 06 090 13553

Office: LOS ANGELES

Date: DEC 05 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: SELF-REPRESENTED

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

The 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. Specifically, the director noted an inconsistency between the applicant's sworn statement of February 23, 1999 and the applicant's initial claim with regard to her date of entry into the United States.

On appeal, the applicant provides a statement reiterating her original claim and explaining the reasons for having provided inaccurate information.

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. In the present matter, the applicant submitted the following documents in support of her initial claim:

1. A signed declaration dated December 22, 2005 signed by [REDACTED] who claimed that she is the applicant's friend and has known the applicant since 1981. Ms. [REDACTED] discussed specifically the incident when the applicant attempted to file her Form I-687 application, but was not allowed to do so.
2. An affidavit dated December 19, 2005 from [REDACTED] claiming to have known the applicant since March 1984. The affiant claimed that the applicant used to clean her house. However, the frequency of their interactions was not discussed, nor was any verifiable evidence about the applicant provided.
3. An affidavit dated December 19, 2005 from [REDACTED] claiming to have known the applicant since July 1986. The affiant claimed that she met the applicant at a supermarket and stated that they have been friends since such time. However, the frequency of their interactions was not discussed, nor was any verifiable evidence about the applicant provided.
4. An affidavit dated December 17, 2005 from [REDACTED] claiming that she has known the applicant since May 1981. The affiant stated that her children were friends with

the applicant and claimed that the applicant used to visit her house often. The affiant did not provide any verifiable information.

5. An affidavit dated December 17, 2005 from [REDACTED] claiming that she has known the applicant since February 1981. The affiant stated that she first met the applicant at a party and claimed that sometime later the two became friends and roommates. The affiant did not provide any verifiable information.
6. An affidavit dated December 14, 2005 from [REDACTED] claiming that she has known the applicant since August 1983. The affiant stated that she became friends with the applicant and "went to reside where she was residing." It is unclear whether the affiant claims that the two were roommates or whether they merely lived in the same neighborhood, as no addresses for the applicant were provided.

On June 8, 2006, the director denied the application, concluding that the applicant failed to establish that she had been residing in the United States continuously during the statutory period. The director specifically discussed the applicant's sworn statement given on February 23, 1999 in which the applicant stated that her first entry into the United States was on February 22, 1999. The director stated that this prior sworn statement was in direct conflict with the claim made by the applicant during her latest legalization interview where she claimed that she first entered the United States in February 1981. The director noted that inconsistencies in the record must be reconciled using independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant submits a statement dated June 16, 2006 reasserting the claim that she entered the United States in 1981. With regard to any discrepancy in her date of arrival, the applicant only states that she was nervous during her interview and may have responded too quickly to some of the questions that were posed to her. The applicant explains that she does not have any bills or receipts as contemporaneous evidence because she received cash when she worked and paid cash for her expenses.

It is noted that the applicant's statements strongly suggest her lack of understanding that the adverse decision was based, in part, on answers provided by her during proceedings that followed the applicant's unlawful entry into the United States at the San Ysidro border in 1999. That being said, a review of the sworn statement provided by the applicant on February 23, 1999 suggests that the director's interpretation of the applicant's response was incorrect. Specifically, in response to the immigration inspector's question of when the applicant attempted to enter the United States, the applicant responded that she entered the United States on February 22, 1999. There is no indication that the applicant meant this as her first date of entry or that the immigration inspector intended to ask the applicant to provide the date of her first entry. Furthermore, the applicant provided a number of her old California identification cards, one of which was issued on October 24, 1990. This independent objective evidence clearly shows that, at the very least, the applicant must have been present in the United States on the date of issue, i.e., on October 24, 1990. While this document is not evidence of the applicant's residence in the United States during the statutory period, it clearly establishes that the applicant entered the country prior to 1999, contrary to the

director's determination. Therefore, the director's specific finding regarding the perceived discrepancy over the applicant's date of entry is incorrect and is hereby withdrawn.

Notwithstanding the director's error in interpreting at least one of the responses provided by the applicant on February 23, 1999, the record shows that the applicant readily admitted that she has never lived in the United States. Regardless of when the applicant made her first unlawful entry into the United States, her admission of never having resided in the United States undermines the applicant's credibility and that of all of the affiants that support the applicant's dubious claim. While additional evidence is provided on appeal, including the California identification card discussed above, none of the documentation addresses the issue of the applicant's residence in the United States during the relevant time period. Thus, the only evidence that corroborates the applicant's claim consists of unverifiable affidavits that provide only minimal information about the date each affiant's first alleged meeting with the applicant and the month and year of such encounter.

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, which, based on the applicant's questionable credibility, is dubious at best. 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 and her reliance upon documents with minimal probative value, it is concluded that the applicant 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.