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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 06 081 13680

Office: LOS ANGELES

Date: DEC 06 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:



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. The decision 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 observed that there were inconsistencies between the beneficiary's testimony during her interview with a Citizenship and Immigration Services (CIS) Officer and the information contained in affidavits submitted in support of the application. The director noted that there was no corroborating documentation submitted in addition to the affidavits, which were of limited probative value due to the discrepancies mentioned. 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 states that the CIS officer who interviewed her appears to have misunderstood her answers, specifically with respect to the date on which she first met the two of the affiants. She states that she is providing corroborative evidence of her continuous unlawful residence in the United States from before 1982 until the date on which she attempted to file a legalization application. The applicant provides copies of affidavits that were previously submitted, but no new evidence, in support of the appeal.

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 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).

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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 20, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her first address in the United States as [REDACTED] Los Angeles California, and indicated that she resided at this address from November 1981 until September 1988. Similarly, at part #33, she showed that she was employed by [REDACTED] as a baby-sitter at this same address for the same period of time. Furthermore, at part #31 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed “None.”

As noted above, the applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills;

school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided four declarations. [REDACTED] provided a declaration in which she stated that she met the applicant for the first time in November 1981 at a wedding in Santa Ana, California. Ms. [REDACTED] stated that she herself resided in Santa Ana, California from January 1982 and May 1988 and provided information regarding her employment during this period. She stated that the applicant told her that she entered the United States in San Ysidro, California, without documentation. Finally, Ms. [REDACTED] stated that she knew the applicant was living in the United States because she attended the same church as the beneficiary and saw her at some birthday parties. Ms. [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence in this country for the relevant time period, nor did she indicate the applicant's address of residence between November 1981 and May 1988. Further, Ms. [REDACTED] testimony that the applicant attended church with the beneficiary conflicted with the applicant's own testimony at part #31 of the Form I-687 application as the applicant failed to list any affiliation with a church. Finally, as noted by the director, the applicant testified under oath during an interview with a CIS officer on April 4, 2006 that she first met Ms. [REDACTED] in Mexico in 1975, thus contradicting Ms. [REDACTED] declaration that she first met the beneficiary in November 1981.

The applicant submitted a second declaration from [REDACTED], who stated that she first met the applicant in Long Beach, California in August 1982. She stated that the applicant told her that she entered the United States through San Ysidro with a visa, and that she knew the applicant arrived in the United States in 1982 because she knew the applicant's father. Ms. [REDACTED] stated that she lived and worked in Long Beach, California between January 1982 and May 1988 and provided her home and work addresses for this period. She stated that she knew the beneficiary was living in the United States between 1982 and May 1988 because she used to see her at every church meeting and at birthday parties. Ms. [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence in the United States for the relevant time period, nor did she indicate that she had knowledge of the applicant's address during this period. Ms. [REDACTED] testimony that she saw the applicant at "every church meeting" also conflicted with the beneficiary's own testimony that she was not affiliated with a church. Ms. [REDACTED] testimony that the applicant arrived in the United States in 1982, and that the applicant informed her that she entered the United States with a visa contradicts the beneficiary's own testimony that she first arrived in the United States in November 1981 without a visa. Finally, as noted by the director, the applicant testified under oath during her interview that she first met Ms. [REDACTED] in Mexico in 1978, not in California in 1982, as stated by Ms. [REDACTED]

The applicant submitted a third declaration from [REDACTED] who stated that she first met the applicant in July 1981 at a family reunion in Long Beach, California. Ms. [REDACTED] provided some details regarding her own employment and cities of residence between 1982 and 1988, and stated that she did not know how the applicant entered the United States. Ms. [REDACTED] stated that she knew the applicant was

living in the United States because she used to see her at "some family reunions and birthday parties." While Ms. [REDACTED] attested to the applicant's residence in this country since 1981, she failed to provide any detailed and relevant information that would tend to corroborate the applicant's claim of continuous residence in the United States for the requisite period. Ms. [REDACTED] does not indicate how frequently she saw the applicant or whether there were any extended periods of time in which she did not see her. Furthermore, as noted by the director, Ms. [REDACTED] stated that she met the applicant in California in July 1981, while the applicant claims that she first entered the United States in November 1981.

Because the above-referenced affidavits lack detail and conflict with the beneficiary's own testimony, they can be afforded limited weight in establishing that the applicant resided continuously in the United States during the requisite period of time between prior to January 1, 1982 and the date on which the beneficiary attempted to file a legalization application between May 5, 1987 and May 4, 1988.

Finally, the applicant submitted a notarized letter from [REDACTED] who states that she employed the applicant as a baby-sitter from November 1981 until September 1988, during which time Ms. [REDACTED] resided at [REDACTED] in Los Angeles, California. Ms. [REDACTED] stated that the applicant was employed during the entire time period, and worked 25 to 30 hours as "attendant person with an hourly wage." The applicant indicated that she both worked and resided at [REDACTED] from November 1981 until September 1988; however, Ms. [REDACTED] does not state that the applicant resided with her at this address or otherwise indicate the applicant's address during this time. Ms. [REDACTED] indicated that she personally employed the applicant as a "baby-sitter" and an "attendant" for nearly seven years, yet provided no details regarding her employment and provided no evidence to corroborate her statements. Because of its significant lack of detail, this affidavit can be afforded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

In denying the application the director noted the discrepancies between the beneficiary's testimony and the information contained in the submitted affidavits. The director further noted that neither the beneficiary nor any of the affiants had submitted evidence to corroborate their statements. The director determined that with all of the discrepancies and lack of corroborating documentation, the applicant's evidence was not credible.

On appeal, the applicant attempts to explain certain contradictions. She states: "I testified that when I first met my affiants was in the United States, and is different when I first known them in my country, I thin[k] the officer misunderstanding [sic] my answers." The applicants states that she is enclosing additional corroborative evidence. However, the applicant has simply re-submitted the four affidavits discussed above.

The applicant's assertion on appeal that her testimony was misunderstood is insufficient to overcome the afore-mentioned discrepancies and deficiencies in the evidence. As is stated above, 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). The applicant has been given the opportunity to satisfy her

burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with her. She has submitted attestations from individuals that lack detail, contradict her own testimony, and can be given very little weight.

The existence of conflicting testimony relating to critical elements of the applicant's residence and the lack of sufficiently detailed evidence that provides relevant and material testimony to corroborate her claim of continuous residence for the period in question 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. The applicant has failed to submit sufficient probative documentation to meet her burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate her claim of residence, 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 as required under section 245A(a)(2) of the Act. 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.