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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-097-14604

Office: MIAMI, FL Date:

NOV 21 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, Miami, Florida and that decision 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 found that the applicant had not submitted sufficient evidence to establish that she had resided continuously in the United States for the duration of the requisite period. In saying this, the director stated that the three (3) affidavits submitted in support of the application were not sufficient to establish that the applicant resided continuously in the United States for the duration of the requisite period. Therefore, the 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 her family has moved to the United States because her mother was a witness in a robbery case. She states that her parents have asked a relative in Brazil to submit documents related to the robbery, but she does not yet have them. The applicant further submits additional documents and statements in support of her 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 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) and 8 C.F.R. § 245a.2(b)(1).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing, no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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. 8 C.F.R. § 245a.2(d)(5).

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 her parents 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 January 5, 2006. 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 addresses in the United States during the requisite period to be [REDACTED] in Deerfield Beach, Florida from April 1980 to February 1982; [REDACTED] in West Palm Beach Florida from February 1982 to December of 1986; [REDACTED] in Coral Springs, Florida from December 1986 to February 1988; and [REDACTED] in Coral Springs, Florida from February 1988 until June of 2003. At part #32 where the applicant was asked to list all of her absences from the

United States since her first entry, she indicated that during the requisite period, she was absent from December of 1982 until January of 1983. At part #33 where the applicant was asked to indicate her employment since she entered the United States, she indicated that her first employment in the United States began in January of 1988 as a self-employed house cleaner.

The record also shows that at the time of her interview with a Citizenship and Immigration Services (CIS) officer, the applicant, who claims she entered the United States when she was approximately six (6) years old, indicated that she never went to school in the United States.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: 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 the following documentation that is relevant to the requisite period:

- An unnotarized statement from [REDACTED] who states that she has known the applicant since March of 1984. Though [REDACTED] states that the applicant is a person of good moral character, she fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which she knows the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.
- An unnotarized statement from [REDACTED] who states that she has known the applicant since June 4, 1984. Though this statement asserts that the applicant is a person of good moral character, [REDACTED] fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no

weight in establishing that the applicant resided in the United States during the requisite period.

- An unnotarized statement from [REDACTED] who states that she has known the applicant since October of 1981. Though this statement asserts that the applicant is a person of good moral character, [REDACTED] fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.
- A handwritten statement from [REDACTED] stating that the applicant's mother worked for her cleaning her house. She states that she has known the applicant since 1981. However, [REDACTED] fails to show the dates that the applicant's mother was employed by her or to indicate whether it is personally known to her that the applicant continuously resided in the United States for the duration of the requisite period. Therefore, only very minimal weight can be afforded to this statement as proof that the applicant resided in the United States during the requisite period.
- A statement from [REDACTED] who states that the applicant's parents were tenants of hers from December of 1986 until February of 1988 when they resided at [REDACTED] Drive in Coral Springs Florida. It is noted here that the applicant indicated that she lived at [REDACTED] in Coral Springs rather than at 3662 on her Form I-687. Because this statement only pertains to part of the requisite period and because the address shown on the letter is not consistent with the address the applicant indicated she lived at on her Form I-687, this letter can be afforded no weight in establishing that the applicant resided in the United States for the duration of the requisite period and only very minimal weight in establishing that the applicant resided in the United States for part of that time.
- An unnotarized statement from [REDACTED] who states that she has known the applicant since October of 1987. Though this statement asserts that the applicant is a person of good moral character, [REDACTED] fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.

The statements from [REDACTED] provide that those individuals did not meet the applicant until after May 4, 1988. Credit card statements and the applicant's driver's license submitted by the applicant similarly show that she resided in the United States after that date. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these statements verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in the United States since April of 1980. The evidence submitted with the application that is relevant to the 1981-88 period in question does not establish that any of the individuals who submitted statements in support of the application personally knew the events and circumstances of the applicant's residence with the exception of [REDACTED] who claims the applicant's parents were her tenants for only part of the requisite period and who states that they were tenants at an address that is not consistent with what the applicant showed her address to be at that time on her Form I-687.

In denying the application the director noted the above, and stated that because statements submitted by the applicant did not pertain to the duration of the requisite period, she failed to meet her burden of proving by a preponderance of the evidence that she resided continuously in the United States during that time. It is noted here that the two (2) statements from Gertrude Sussman were not noted by the director. Though these pertain to the duration of the requisite period, they alone are not sufficient to meet the applicant's burden of proof for the reasons previously stated.

On appeal, the applicant provides additional evidence in an attempt to meet her burden of proof. She states that she has requested a police report from Brazil as part of this evidence and indicates that she will submit a brief within thirty (30) days. It is noted here that the applicant's Form I-694 Notice of Appeal of Decision on which she indicated she would submit a brief within thirty (30) days was received by the Service on March 18, 2007. As of November 6, 2007 the Service has not received either the police report referred to by the applicant or a brief in support of her appeal. However, the Service has received the following additional evidence:

- A copy of the applicant's brother's passport showing that he entered the United States on July 22, 1985. With this photocopy the applicant has submitted a statement in which she asserts that her brother lived in Brazil with her grandparents but that he entered in 1985 for a fourteen (14) day visit. Because these pages of the applicant's brother's passport do not pertain to the applicant, they carry no weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An unnotarized statement from [REDACTED] who states that she has known the applicant since March 27, 1982. Though this statement asserts that the applicant is a person of good

moral character, [REDACTED] fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.

- An unnotarized statement from [REDACTED] who states that she has known the applicant since April 5, 1982. Though this statement asserts that the applicant is a person of good moral character, [REDACTED] fails to indicate whether she met the applicant in the United States. She fails to provide evidence that she herself was present in the United States during the requisite period. She does not indicate the nature of her relationship with the applicant or provide an address at which the applicant resided during the requisite period or to indicate that she is personally aware of the events and circumstances of the applicant's residency at any point in time during the requisite period. Therefore, this statement can be afforded no weight in establishing that the applicant resided in the United States during the requisite period.

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). In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from individuals that are significantly lacking in detail and are not sufficient to meet the applicant's burden for reasons previously noted.

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 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 contradictory statement regarding the applicant's address of residence during the requisite period and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish that she maintained continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date her parents 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.