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U.S. Citizenship
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[REDACTED]

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FILE:

[REDACTED]

Office: HOUSTON

Date:

OCT 05 2007

MSC 05 214 10485

IN RE:

Applicant:

[REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

The director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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, counsel asserts that the applicant's testimony and supporting evidence are sufficient to meet her burden of proof and establishes her eligibility to adjust to temporary resident status. Counsel submits a brief and additional documentation 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 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.

On a form to determine class membership, the applicant stated that she first arrived in the United States in 1981. 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 May 2, 2005. At part #30 of the Form I-687 application, where applicants are asked to list all residences in the United States since first entry, the applicant indicated that she lived at [REDACTED] Texas from July 1981 to February 1989. At part #33, the applicant stated that [REDACTED] of Houston, Texas employed her as a housecleaner from August 1981 to July 1987 and as a babysitter from July 1987 to July 1991. We note that the applicant made this same distinction on a Form I-687 application that she signed under penalty of perjury on December 1, 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

1. A December 5, 2003 affidavit from [REDACTED], in which she stated that she had known the applicant since August 1981, and that they first met when the applicant babysat for her neighbor. We note that the applicant stated that while she worked for [REDACTED] from 1981, she did not begin her job as a babysitter for [REDACTED] until 1987.
2. A December 2, 2003 sworn statement from [REDACTED] the applicant's cousin, in which she stated that the applicant lived in the United States continuously since 1981. We note that the copy of [REDACTED] Texas driver's license reflects that she was born on January 1, 1975. Therefore, the

record is unclear as to whether her statement regarding the applicant's residency is based on her own independent knowledge.

3. An April 3, 2002 sworn statement from [REDACTED] in which he stated that the applicant lived in his home at [REDACTED] from 1981 to 1989. [REDACTED] stated that the applicant was not charged for her tenancy. The applicant submitted no documentation to verify that either she or [REDACTED] during the stated period. In an April 23, 2003 sworn statement, [REDACTED] stated that he had known the applicant since 1981 and that she had resided in the United States since 1981. However, in his latter statement, he did not state that the applicant lived with him at any time.
4. An August 2, 1991 affidavit from [REDACTED] in which she stated that the applicant worked for her taking care of her children from 1987 to February 1991. In a second affidavit of the same date, Ms. [REDACTED] stated that the applicant worked as her housekeeper twice a week from 1981 to 1987. In an April 3, 2002 affidavit, [REDACTED] again stated that the applicant worked for her "cleaning the house and taking care of my children" from 1981 to February 1991. In an April 26, 2003 affidavit, [REDACTED] stated that she met the applicant in June 1981, and that she "first met her since her husband was working with" the applicant's husband. This latter statement is inconsistent with that of the applicant's husband, who stated that he did not meet his future wife until July 1981. Further, as discussed further below, it is inconsistent with the applicant's December 19, 2003 statement in which she stated that she met her husband in 1985.
5. An August 2, 1991 affidavit from [REDACTED] in which she stated that to her personal knowledge, the applicant had resided in Houston, Texas since 1981. The affiant did not state the circumstances of her initial acquaintance with the applicant or her knowledge of the applicant's residency in the United States.
6. An August 2, 1991 affidavit from [REDACTED] in which she stated she had known the applicant since 1981 and that the applicant had resided in Houston, Texas since that time. The affiant did not state the circumstances of her initial acquaintance with the applicant.
7. A December 2, 2003 sworn statement from the applicant's husband, in which he stated that he met the applicant in Houston, Texas in July 1981, and that they married in Mexico in September 1985. This statement is inconsistent with the applicant's statements, which are also inconsistent with each other. In a December 19, 2003 statement, the applicant stated that she met her husband in the United States in 1985. In a November 12, 2005 affidavit, the applicant stated that she first met her husband in Mexico City in December 1980.

The applicant submitted an August 1, 1991 statement to attest to her absence from the United States from July 1 to July 20, 1987. The document, however, is not signed and no contains no information as to the intended author.

In her Notice of Intent to Deny (NOID) dated October 20, 2005, the director noted that, during a September 2, 2005 interview, the applicant stated that she met her future husband in December 1980. Although the record contains no interviewer's notes confirming this interview, in a November 12, 2005 affidavit, the applicant stated that she initially met her future husband in Mexico City in December 1980, prior to their arrival in the United States. We note that this is the first indication in the record that the applicant and her husband met prior to meeting again in the United States.

The director also questioned the applicant's statement that she gave birth in Mexico in January 1987, returned two weeks later, and did not see her son again for six months when he was brought to the United States by the applicant's sister-in-law. We note that despite counsel's assertion to the contrary, the director did not question the applicant's failure to list her son on the Form I-687 or her January 1987 absence. While the applicant did fail to mention the child on her Form I-687 application that she signed on December 1, 1990, it is not an issue with the Form I-687 application that is the subject of this appeal. We further note that the applicant revealed an absence in 1987 on both of her applications.

Further, while the director questioned the applicant's short stay in Mexico and her apparent failure to receive follow-up medical care following the child's birth, the director did not identify any evidence of fraud in the applicant's statement regarding her absence in January 1987. Therefore, it cannot provide a basis for the denial, and we withdraw any implication by the director to the contrary.

Nonetheless, the applicant provided inconsistent supporting statements and affidavits of her residence in the United States. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these unresolved inconsistencies, 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 -*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The record reflects that the director denied the applicant's Form I-485 application, MSC 02 212 61689, on February 2, 2004. The appeal of that denial is not at issue in this decision.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility