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U.S. Citizenship  
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FILE: [Redacted] Office: BOSTON (MANCHESTER, NH) Date: **AUG 04 2008**  
MSC 06 095 14594

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

*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, Boston, Massachusetts. 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, on January 3, 2006. The director issued a Notice of Intent to Deny (NOID) the application on March 29, 2006. Counsel for the applicant submitted her response on April 10, 2006. The applicant attended a Citizenship and Immigration Services (CIS) interview on November 6, 2006. Upon review of the record, the director denied the application on November 8, 2006. On appeal, counsel for the applicant submits a brief and a copy of a notarized affidavit.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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).

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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she had last entered the United States in July 1981. The applicant listed her address for the pertinent time period as: [REDACTED] from July 1981 to July 1989. The applicant indicated on the Form I-687 that she belonged to the Assembly of God church in Lowell, Massachusetts/Somerville, Massachusetts from 1987 to the date of the Form I-687. At her November 6, 2006 interview, the applicant explained that she first attended the Somerville, Massachusetts church two months after entering the United States and that in 1987 she decided to just go to the Somerville, Massachusetts church. In response to question #33 on the Form I-687 regarding the applicant's employment, the applicant indicated she was a housewife from July 1981 to 1989; at the interview on November 6, 2006, the applicant indicated that she worked for a company during this time period and was paid \$6.50 per hour. The applicant listed an absence from the United States on the Form I-687 in 1984 to visit family in Brazil; at the interview on November 6, 2006, the applicant indicated she was outside the United States in 1984 for two weeks and that she was also outside the United States in April 2001 for 20 days and re-entered the United States with a B-2 nonimmigrant visa.

The record also includes:

- A December 26, 2005 declaration signed by [REDACTED] who declares: that he met the applicant for the first time in the summer of 1981 when the applicant attended his brother's church services in Stoughton, Massachusetts; that his brother is the pastor of the World Revival Church, Assembly of God, located in Stoughton, Massachusetts; that the applicant's family and his family became good friends due to their religious involvement in the World Revival Church, their social involvement in the Brazilian community in Nashua, New Hampshire, and family activities; that the applicant told him that she had entered the United States before

January 1, 1982 and had continuously resided in unlawful status since then until 1988 and that she had been physically present in the United States from 1986 through 1988 until the present time.

- A Bay State Gas utility statement with a billing date of September 17, 1981 for the service premises at ██████████ Massachusetts addressed to the applicant at ██████████ Massachusetts.

In the November 8, 2006 decision, the director observed that the "affidavit" signed by ██████████ was not notarized and thus questioned the validity of the affiant's statement. In addition, the director noted that upon inspection the Bay State Gas utility bill listed two separate account numbers; that a representative of Bay State Gas utility stated that neither of the account numbers listed on the bill were valid as they contained too many numbers; and that Bay State Gas records did not show that they serviced ██████████ Massachusetts. The director determined that neither document submitted established the applicant's entry into the United States prior to January 1, 1982.

On appeal, counsel for the applicant re-submits the declaration of ██████████ signed December 26, 2005 and notarized on November 15, 2006. Counsel asserts that the fact that the applicant failed to submit evidence such as personal data from record keeping is not by itself a sufficient basis for finding the evidence submitted not credible because the proof of continuous residence in the United States during the requisite period of time may consist of any combination of documents including other relevant documents such as affidavits. Counsel contends: "In those applications where the only documentation submitted is affidavit, [sic] if the affidavits are credible and verifiable, are sufficient to establish the facts at issue and there is no adverse information, the application shall be approved."

The AAO has reviewed the record in this matter and finds that the applicant has not established her entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the applicable time period. The record contains adverse information as observed by the director in the November 8, 2006 decision. The Bay State Gas utility statement is not legitimate. The director pointed out the inconsistencies between the Bay State Gas utility statement submitted and Bay State Gas utility practices and neither counsel nor the applicant offered any explanation or clarification regarding the director's analysis of this document. The Bay State Gas utility statement appears manufactured and calls into question the veracity of the applicant who submitted the document. The AAO finds that the Bay State Gas utility statement has no probative value in establishing the applicant's residence in the United States.

In addition, the AAO has reviewed the affidavit submitted by Francisco ██████████ and finds the information in this affidavit inconsistent with the applicant's testimony and the information provided on the Form I-687. ██████████ declares that he first met the applicant when she attended his brother's church in Stoughton, Massachusetts. The applicant indicated on the Form I-687 that the church she attended was in Somerville or Lowell, Massachusetts. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, ██████████

affidavit contains only general information regarding his claimed knowledge of the applicant's entry into and continuous residence in the United States. His affidavit does not contain sufficient detail of the circumstances and events of how he and the applicant met, other than generally at his brother's church, and of the subsequent interactions between he and the applicant, other than generally through religious involvement in the World Revival Church, their social involvement in the Brazilian community in Nashua, New Hampshire, and family activities. The lack of detail of specific events and interactions and the inconsistent information presented undermines the credibility of the affiant. The affidavit lacks probative value in this matter.

Upon review of the entire record in this matter, the AAO finds that the documentation submitted lacks probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient documentation and the applicant's interview statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons noted. The absence of credible and probative documentation to establish the applicant's claim of continuous residence for the entire requisite period 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 meet her burden of proof and 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. The appeal will be dismissed.

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