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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC 05 265 14626

Office: NEW YORK

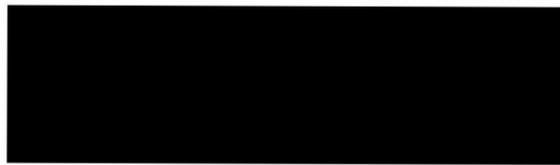
Date: **AUG 07 2008**

IN RE: Applicant:



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. 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, 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, New York. 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 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 asserts that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted. The applicant states that there had been a clerical error with regard to the applicant's address on West 47<sup>th</sup> Street, and that the priest who submitted a letter on her behalf personally knew her as an active member of his parish since 1986.

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 245(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.* at 80. 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, 431 (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 he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

#### Affidavits

- [REDACTED] submitted a sworn statement dated April 21, 2006 wherein he states that the applicant lived at [REDACTED] from September of 1981 until September of 1983. The affiant provides no additional information.
- [REDACTED] submitted a sworn statement dated March 17, 2006 wherein he states that he has personally known the applicant and her family since January 2, 1982. The affiant states that the applicant was his neighbor living at [REDACTED], and that as of the date of the affidavit, was living at [REDACTED]. The affiant attests to the applicant’s good character, and provides no additional information.
- [REDACTED] submitted a sworn statement dated March 16, 2006 wherein he states that he has personally known and been acquainted with the applicant and that he has personal knowledge that the applicant has resided in New York since January of 1982. The affiant states that he and the applicant were neighbors, and provides no additional information.

- [REDACTED] provided a sworn statement dated March 17, 2006 wherein she states that she is the superintendent at [REDACTED] that she has resided at that address for 40 years, that she has known the applicant since approximately September of 1981, that the applicant was her neighbor, and that the two are friends. The affiant further states that the applicant resided at "[REDACTED]" from approximately August of 1990 until December of 1992. The affiant attests to the applicant's good character and confirms that she has been in the United States since 1981. The affiant provides no additional information.
- [REDACTED] submitted a sworn statement dated March 10, 2006 wherein she states that she has been acquainted with the applicant since 1981 in New York, and that the two were neighbors. The affiant provides no additional information.
- [REDACTED] submitted a sworn statement dated March 16, 2006 wherein he states that the applicant was under his care when she arrived in the United States, from September of 1981 until September of 1983. The affiant states that he provided her with food and board during that time frame, and provides no additional information.
- [REDACTED] submitted a sworn statement dated March 16, 2006 wherein he states that he has known the applicant since 1986, that the two shared an apartment in Woodside, NY from April of 1986 until July of 1990. The affiant attests to the applicant's good character, and provides no additional information.
- [REDACTED] submitted a sworn statement dated June 21, 2005 wherein he states that the applicant resided at [REDACTED] from October of 1983 till March of 1986. The affiant provides no additional information.
- [REDACTED] provided a notarized letter of reference dated February 15, 2006 on behalf of the applicant. The letter states that the affiant has known the applicant for over five years, and attests to the applicant's good character.

#### Employment Statements

- [REDACTED] provided a sworn statement dated March 16, 2006 wherein she stated that the applicant worked for her as a housekeeper from January of 1994 through May of 1996, earning \$8.00 per hour.
- [REDACTED] provided a sworn statement dated March 7, 2006 stating that the applicant was employed by her to clean her apartment from 1987 – 1993.
- [REDACTED] provided a sworn statement dated June 20, 2005 stating that the applicant worked at Sabalu Belts as a seamstress from June of 1983 until February of 1986.

provided a sworn statement dated June 15, 2005 stating that the applicant has been employed by her for the last five years, and that she has been an excellent employee.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statements submitted by the applicant are of little probative value as they fail to provide all information required by the above cited regulation. None of the statements provide the applicant's address during employment, show periods of layoff (or state that there were none), declare whether the information attested to was taken from employment records, identify the location of any such records, or state whether the records are accessible, and if not, why not.

#### Applicant's Sworn Statement

The affiant provided sworn testimony to a United States immigration officer on March 22, 2006. At that interview, the affiant stated that she entered the United States on September 20, 1981, without inspection, in the company of her uncle.

Although the applicant has submitted numerous affidavits and her sworn statement in support of her application, the applicant has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. In the affidavits submitted, none of the affiants provided detailed information generated by their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the applicant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. The affiant's state generally how they met the applicant, and that they had a social or casual relationship with her. The affidavits contained only general statements of an ongoing relationship with the applicant without specific detail establishing the specifics of the relationship such as dates and/or places of contact, knowledge of life events experienced by the parties, or any other documentation to corroborate the affiant's generalized statements. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The statement must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. 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 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits and statement

submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

Other Evidence

- The applicant submitted an attestation dated April 19,2006 from [REDACTED] a Parochial Vicar at the Church of St. Sebastian in Woodside, NY. The attestation noted the applicant's address and states that the applicant has been a parishioner of St. Sebastian since 1986, and that she worships there often.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations to an applicant's residence by churches, unions, or other organizations may be made by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The attestation provided by the church does not establish the applicant's residence during the requisite period as it does not comply with the above cited regulation. The attestation by [REDACTED] does not: state the addresses where the applicant resided during her church membership period (since 1986, as stated [REDACTED] on April 19, 2006); establish in detail how the statement's author would know the applicant and have personal knowledge of her whereabouts from 1986 until the date of the church's letter; and establish the origin of the information being attested to, that the applicant was a member of the church since 1986. The attestation letter does not reference organizational membership records or otherwise specifically state the origin of the information being attested to. For these reasons, the attestation is not deemed probative and is of little evidentiary value.

- The applicant submitted a receipt from Audio Video indicating the sale of merchandise to the applicant. The document appears to be dated January 3, 1986. The date, however, is not clearly legible as the year has been written over, and appears to have been altered.

The evidence submitted by the applicant, and listed above, does not establish the applicant's presence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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 her claim. As previously stated, pursuant to 8 C.F.R. § 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 reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.