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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
MSC 05 280 11924

Office: MIAMI

Date: **AUG 15 2008**

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, 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. 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 July 7, 2005. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on September 21, 2006 and a Notice of Intent to Deny (NOID) the application was issued on November 3, 2006. Upon review of the record, the director denied the application on November 20, 2006, 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 submits a statement and re-submits documents previously provided.

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 July 7, 2005 Form I-687, the applicant indicated she had last entered the United States on December 3, 1990. The applicant listed her addresses for the pertinent time period as: [REDACTED] Moonachie, New Jersey from October 1981 to December 1987; and [REDACTED], Sunrise, Florida from January 1988 to October 1990. The applicant indicates she was employed as a housekeeper/babysitter from January 1982 to December 1987 in Moonachie, New Jersey; and as a housekeeper/babysitter from January 1988 to August 1990 in Sunrise, Florida. The applicant indicates: that she left the United States in June 1983 and returned in June 1983 from Trinidad for personal reasons; that she left the United States in June 1986 to July 1986 to go to Trinidad for personal reasons; and that she left the United States in May 1988 to June 1988 to go to Trinidad for personal reasons. Although not relevant to the applicable time period, the applicant indicates the only other time that she left the United States was in November 1990 to go to Trinidad and that she returned to the United States in December 1990.

The record also includes the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, filed June 28, 2002 and withdrawn by the applicant on June 25, 2004. The Form I-485 shows that the applicant has two children, born June 20, 1986 and June 3, 1988.

The record further includes the applicant's Form I-687 dated January 22, 1991 in which the applicant: indicates her two children were born in Trinidad; lists the same addresses for the pertinent time period as on the July 7, 2005 Form I-687; indicates she left the United States and returned to the United States in June 1983 for a vacation, that her trip to Trinidad in June/July 1986 was to have a baby, and that her trip to Trinidad in May/June 1988 was to have a baby; and lists the same employment as on the July 7, 2005 Form I-687. The record also contains the applicant's affidavit for determination of class membership in the LULAC class action signed by the applicant on January 22, 1991 in which the applicant declares that

she first entered the United States in October 1981 by illegally crossing the US/Canadian border at Niagara Falls and that she violated her "status" by overstaying and working; that she last entered the United States in December 1990 at Miami International Airport with a B-2 visa and that she violated her status by overstaying and working; and that she went to the immigration office in Manhattan in August 1987 and was told that she did not qualify for amnesty as she left the country in 1983 and had returned to the United States with a visa. The record further contains a Form I-690, Application for Waiver of Grounds of Excludability signed by the applicant on January 22, 1991, in which the applicant states she was misinformed by an immigration officer so she missed the deadline date to file for amnesty.

The record contains a copy of the record of the applicant's marriage registration showing the applicant was married on May 16, 1989, and was residing in St. (indecipherable) Lands Marabella, and that the marriage took place in the Revenue office of San Fido.

The AAO has reviewed the following letters/affidavits regarding the applicant's residence in the United States during the applicable time period:

- An undated letter signed by _____ residing in Moonachie, New Jersey who states that she has known the applicant for the past ten years; that the applicant came to live in the United States in October 1981 and lived with her family working as a housekeeper/babysitter until December 1987; and that the applicant moved to Florida where she was employed as a housekeeper/babysitter to November 1990.
- A June 10, 1991 affidavit signed by _____ residing in Sunrise, Florida who declares that she has known the applicant for fifteen years; that the applicant came to live in the United States in October 1981; that the applicant first lived in Moonachie, New Jersey and worked as a housekeeper/babysitter until December 1987; that in January 1988 the applicant came to live with her at _____ in Sunrise, Florida and worked as a housekeeper and sometime babysitter.
- A June 10, 1991 affidavit signed by _____ residing in Sunrise, Florida who declares that she has known the applicant the past eighteen years; that the applicant came to live in the United States in 1981; that the applicant lived in Moonachie, New Jersey until December 1987 performing domestic duties; and moved to Florida in January 1988 and while there also performed domestic duties for the Samlals.
- A May 28, 2002 affidavit signed by _____ residing in Coral Springs, Florida who declares that she has known the applicant and the applicant's husband for over 17 years; and that the applicant and her husband moved from Trinidad to the United States where they lived in New York and later moved to South Florida.
- A May 30, 2002 affidavit signed by _____ residing in Lake Worth, Florida who declares that he has known the applicant and her husband since 1983 when they lived in Jamaica Queens, New York; that in 1984 the applicant and her husband lived together and in 1990 they moved to Florida.

- A May 20, 2002 affidavit signed by [REDACTED] residing in Port St. Lucie, Florida who declares that he has known the applicant's husband and the applicant while they lived in New York; and that in 1990 they moved to Florida.
- A May 29, 2002 letter signed by [REDACTED], a resident priest at Florida Sevashram Sangha, Inc. in Lake Worth, Florida who declares that while residing in Canada he knew the applicant's husband; that he knew the applicant's husband moved to Jamaica Queens, New York in 1983; that he [the applicant's husband] met the applicant in 1983 and they lived together; and they moved to Florida in 1990.
- A May 28, 2002 affidavit signed by [REDACTED] residing in Coral Springs, Florida who declares that he has known the applicant's husband and the applicant for over 23 years; that the applicant and her husband met in 1984; and that they moved to Florida in 1990.
- A May 28, 2002 letter signed by [REDACTED] residing in Sunrise, Florida who states that he has known the applicant and her husband since 1984 when he met them while he was vacationing in New York; and that they moved to Florida in 1990.

The record also includes copies of several receipts dated in 1983 and 1985; the receipts do not contain any information identifying to whom the receipts were issued.

As referenced above, the director denied the application on November 20, 2006. On appeal, the applicant observes that the director denied her application 13 days before the date her response to the NOID was due. The applicant asserts that she entered the United States in 1981 with a valid visa and that she has never claimed that she entered the United States through Canada without inspection. The applicant notes that the requested documents are from over 20 years ago and that some of the documents she submitted have been misplaced by Citizenship and Immigration Services (CIS). The applicant re-submits some of the affidavits/letters referenced above.

Preliminarily, the AAO acknowledges the failure of the director to afford the applicant the full 30 days to respond to the NOID; however, the applicant has been provided opportunity to supply additional information on appeal. Even if the director committed a procedural error by failing to allow the full 30 days to respond to the NOID, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has provided a statement on appeal but has failed to provide any new documentation. The AAO finds that it would serve no useful purpose to remand the case simply to afford the petitioner yet another opportunity to supplement the record.

Upon review of the totality of the record, the AAO finds inconsistencies within the applicant's testimony and with other documents. For example, the applicant declares in her affidavit for determination of class membership in the LULAC class action that she first entered the United States in October 1981 by illegally crossing the US/Canadian border at Niagara Falls. The applicant's statement on appeal that she never said this is contradicted by the signed affidavit. The applicant's indication that she left the United States to have her two children in June/July 1986 and in May/June 1988 is not accompanied by any information on how the applicant illegally re-entered the United States. The AAO does not find the

applicant's statement regarding her departures and re-entries credible. In addition, the applicant does not include information that she left the United States to return to Trinidad in 1989, yet the record contains the registration of the applicant's marriage in Trinidad on May 16, 1989. 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).

The AAO has also reviewed all the affidavits and letters listed above and finds that the majority of the affidavits only provide general information regarding the applicant's residence in New Jersey, New York, and Florida. In an undated letter, [REDACTED] indicates the applicant lived with her family and worked as a housekeeper in Moonachie, New Jersey and [REDACTED] in her affidavit declares that the applicant lived with her and work as a housekeeper in Sunrise, Florida; however, neither the letter nor the affidavit, comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), which requires that letters from employers include declarations that the information was taken from company records, 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. Moreover, the letter signed by [REDACTED] conflicts with the statements of [REDACTED], and [REDACTED] who seem to believe that the applicant lived in New York, not New Jersey during a portion or all of the time period between 1981 and 1987. The AAO notes as well, that it is unclear how many of the declarants personally knew the applicant lived in a particular place as the declarants apparently lived in different areas at least during a portion of the time period.

Statements made by the declarants that the declarants have known the applicant since a certain date without the pertinent details describing how the declarants met the applicant, without concrete information detailing interactions between the declarants and the applicant, and details of the claimed relationships of more than ten to twenty-five years, have little probative value. When an applicant is attempting to establish eligibility for this benefit with affidavits, the applicant must provide affidavits that have some level of detail. The AAO finds that the declarations of [REDACTED], [REDACTED], and [REDACTED] all fail to provide sufficient information regarding the nature and frequency of their contact with the applicant or the events and circumstances surrounding their interactions with the applicant. Based on the minimal information found in these affidavits/declarations, the AAO is unable to conclude that the affiants' actually had personal knowledge that the applicant entered the United States prior to January 1, 1982 and resided in the United States for the requisite time period. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

The AAO has also reviewed the photocopies of receipts submitted on appeal but finds that these photocopies have no probative value in establishing the applicant's entry into the United States prior to January 1, 1982 or continuous unlawful residence through the requisite time period.

When viewed as a whole, the information in the record lacks the necessary detail to substantiate 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 declarations submitted and the inconsistent information in the record 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 above noted. The absence of credible and probative 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. 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.