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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-210-10099

Office: LOS ANGELES

Date: DEC 17 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: SELF-REPRESENTED

**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.

John F. Grissom, Acting 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 Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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.<sup>1</sup>

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 noted that the applicant submitted copies of her immunization records and attestations from persons born in 1980 and 1985 respectively. The director also noted that the attestations were lacking in detail and were not credible. 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's legal representative asserts that the applicant has provided sufficient evidence to establish her continuous unlawful residence in the United States during the requisite period.

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 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 the application. 8 C.F.R. § 245a.2(b).

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) 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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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<sup>1</sup> It is noted that the law graduate will not receive notice of this proceedings because there is no evidence to show that he complied with 8 CFR § 292.1(a)(2)(iii). Representations will be considered, but no notice.

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.

Here, the submitted evidence is relevant, probative and credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on April 28, 2005. The applicant indicated on the CSS/Newman (LULAC) Class Membership Worksheet, Form I-687 Supplement, that she is a CSS class member.

The record includes the following documents in support of the applicant’s claim of residence in the United States during the requisite period:

- A declaration from [REDACTED] in which she stated that she is the applicant’s sister and that she was born in 1985. She also stated that to the best of her knowledge, the applicant has resided in the United States for as long as she has known her.

- An affidavit from [REDACTED] in which he stated that the applicant's mother is his sister and that he has known the applicant to be in the United States since March of 1981. He also stated that the applicant and her parents lived with him at [REDACTED] in Long Beach, California until 1982 when the family moved to Santa Barbara, California to live.
- An affidavit from [REDACTED] in which he stated that the applicant's parents rented a room with the applicant from him at [REDACTED] in Santa Barbara, California from 1982 to 1989. He also stated that he would regularly go to the house to collect rents from the applicant's parents and would find them to be responsible and very pleasant people.
- A copy of the applicant's immunization records dated 1981, 1982, 1984, and 1990.

In denying the application the director noted that the evidence submitted by the applicant was insufficient to establish her continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period.

On appeal, the applicant's representative reasserts the applicant's claim of eligibility for temporary resident status and submits the following evidence:

- A letter from the Coordinator of Pupil Personnel Services and Custodian of Student Records for the Santa Maria-Bonita School District in which he stated that he personally reviewed the applicant's school records from her enrollment at Juan Pacifico Ontiveros Elementary School. He included, with raised seals, copies of the applicant's Certificate of Completion, school transcripts, and immunization records showing immunizations for 1981, 1982, 1984, and 1990.
- A letter from [REDACTED] of the Records Department, Santa Barbara School District in which she encloses copies of the applicant's elementary school records and immunization records.
- Updated attestations from [REDACTED], and [REDACTED]
- Copies of rent receipts for the premises known as [REDACTED] in Santa Barbara, California issued to the applicant's parents during the requisite period.

Photo copies of the applicant's school identification cards and personal photos which appear to have been taken of her in the United States at an early age.

- A declaration from [REDACTED] dated April 10, 2007 in which she states that she has resided at [REDACTED] in Santa Barbara, California for the past 30 years. She also states that she has known the applicant and her mother since they moved next door to her at [REDACTED] in Santa Barbara, California in 1982. She further

states that she would take care of the applicant in her mother's absence, and would pick her up from the bus stop at a time when she attended kindergarten and during her first year at elementary school. The declarant states that she has watched the applicant become a young lady and that she and the applicant's mother are still close friends.

The applicant submitted several other documents that make reference to her residing in the California area after the requisite period. However, these documents are not relevant to the applicant's claim.

The contemporaneous documents submitted by the applicant appear to be credible. The letters, declaration and affidavits submitted on the applicant's behalf appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses. The applicant's school records and immunization records contain a raised seal and were produced by the Custodian of Student Records, Santa Maria-Bonita School District.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present I-687 Application filed with the Service; that any inconsistencies exist within the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E- M--*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* At 79. The documents that have been provided in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that she entered the United States before January 1, 1982 and that she has maintained continuous, unlawful residence status from such date through the date that she or her parents were dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

Thus, the applicant's appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER:        The appeal is sustained.