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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05-168-11931

Office: LOS ANGELES

Date: DEC 19 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.

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 AAO summarily dismissed the appeal. However, the AAO will *sua sponte* reopen this case for further consideration pursuant to the regulation at 8 C.F.R. § 210.2(g). Therefore, the decision is once again 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 denied the application, finding that because of inconsistencies in the record regarding her addresses of residence during the requisite period and because the applicant stated under oath in 1994 that she first entered the United States in September of 1982, the applicant had not established by a preponderance of the evidence that she had first entered the United States prior to January 1, 1982 and then continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the applicant has established her unlawful residence for the requisite time period asserts that the apparent discrepancy regarding the applicant's addresses of residence during the requisite period can be explained by the fact that the applicant resided both with her brother and with her employers during that period. Counsel argues that the evidence previously submitted by the applicant satisfies her burden of proof.

The AAO initially summarily dismissed this appeal because the record did not contain additional evidence or a brief in support of the appeal. However, counsel for the applicant responded to the summary dismissal by submitting both a brief and evidence that United States Citizenship and Immigration Services (USCIS) had timely received the brief. Therefore, pursuant to 8 C.F.R. § 210.2(g), the AAO will *sua sponte* reopen this case for further consideration.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant's family and friends, employment verification declarations and a receipt. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits from relatives [REDACTED] and [REDACTED]. Additionally, she submitted employment affidavits from [REDACTED], and [REDACTED].

Declarants [REDACTED] and [REDACTED] each state that they first met the applicant in 1982 at a Christmas gathering with family members. [REDACTED] goes on to state that she also saw the applicant again at a family birthday party in March of 1983 and then a few times a month subsequent to that party. [REDACTED] states that he also saw the applicant at his son's wedding in October 1984 and then on May of each year at his wife's birthday gatherings. [REDACTED] states that she saw the applicant in March 1983 at her son's birthday party and in October 1984 at her brother's wedding. She goes on to say that she also spoke with the applicant twice monthly on the telephone. Though each of these declarants states that they are also submitting photocopies of their identity documents, these documents were not found in the record. Though these declarants detail their interactions with the applicant and, collectively, they state that they interacted with the applicant on at least a monthly basis after March of 1983, these declarants did not meet the applicant in the United States until Christmas of 1982. Therefore, they cannot have personal knowledge of her presence in the United States prior to January 1, 1982.

Affiant [REDACTED] provides cities of residence but no street addresses for the applicant during the requisite period and states that the applicant is his sister. He further states that the applicant has resided with him since she entered the United States. However, he does not provide the exact dates that correspond with his residence with the applicant or state whether there were periods of time when the applicant did not reside with him. He also fails to provide an address at which he and the applicant resided together.

Though affiant [REDACTED]<sup>2</sup> states that she has known the applicant since 1985 and that they are still friends, the affiant does not state whether or not she knows if the applicant ever resided in the United States during the requisite period. Therefore, this affidavit offers no proof that she did so.

The record contains three employment declarations from: [REDACTED] of [REDACTED] and [REDACTED].

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company

<sup>1</sup> This affidavit is dated May 25, 1990.

<sup>2</sup> This affidavit is dated May 23, 1990.

records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

Declarant [REDACTED] states she is a secretary at [REDACTED] and asserts that the applicant was listed in her records as residing at [REDACTED] in Sepulveda, California and was employed from November 5, 1987 until "the present date." However, as this declaration is not dated, it is not clear how long this employer's records indicate the applicant worked for them.

Declarant [REDACTED] states that the applicant lived with her and worked for her while she babysat her children from 1984 to 1987. She states that her address at the time was [REDACTED] in Pacoima, California. However, it is noted that affiant [REDACTED] has also stated that the applicant resided with him continuously from the time she first entered the United States.

Affiant [REDACTED] states that the applicant worked for her as a housekeeper from 1981 to 1984. Though the applicant has stated on appeal that she resided with this affiant, the affiant does not note the applicant's address of residence during her employment period or state whether the applicant resided with her during that time. The affiant further fails to state whether she obtained information regarding the applicant's dates of employment from official records or how she was otherwise able to determine her dates of employment.

The employment attestations from [REDACTED] and [REDACTED] fail to state how each employer was able to determine the applicant's dates of employment. Further, none of the declarants who claim they employed the applicant state whether there were any periods of layoff during the applicant's employment or whether the applicant was otherwise absent from her place of employment. Because these attestations are lacking with regards to the regulatory requirements found at 8 C.F.R. § 245a.2(d)(3)(i), they can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Also in the record is a photocopy of a purchasers copy receipt that bears the applicant's name and the date December 1, 1987. While this receipt indicates that the applicant sent a money order from the United States in December of 1987, it does not offer proof of her residence in the United States before that time.

Though the record of proceeding does contain a California Identification Card that contains the applicant's name and indicates a United States address for her, this card was issued in February of 1989, which is after the requisite period ended. Therefore, though this document is proof of the applicant's identity, it does not offer proof of her residence in the United States during the requisite period.

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<sup>3</sup> This affidavit is dated May 11, 1990.

The record also contains notes from two separate interviews with immigration officials regarding the applicant's residence in the United States during the requisite period. While notes from the applicant's October 2006 interview regarding her Form I-687 application indicate that the applicant stated that she first entered the United States in August of 1981, both notes from the applicant's interview with an immigration official in March of 1994 and a sworn statement taken from the applicant in Spanish at the time of that interview state that the applicant first entered the United States in September of 1982. That the applicant has made two contradictory claims regarding the date she first entered the United States calls into question her current claim that she entered the United States prior to January 1, 1982. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Though the applicant did provide an explanation for the apparent discrepancy regarding her address of residence during the requisite period, stating that she resided both with her brother and with her employers during that time, the director also noted the discrepancy in the record regarding the date the applicant first entered the United States. The applicant did not address this discrepancy on appeal and the record does not contain any prior explanation for this discrepancy.

This inconsistency is material to the applicant's claim in that they it has a direct bearing on whether the applicant first entered the United States prior to January 1, 1982, which is a regulatory requirement for this benefit. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.