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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-361-11153

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:

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 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 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.

On appeal, the applicant asserts that she has resided in the United States in an unlawful status for the requisite time period and she submits additional evidence in support of her application.

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. 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). To meet his or her burden of proof, an applicant must provide evidence of

eligibility apart from the applicant's 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).

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 several affidavits and letters from her friends and family. 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 record contains affidavits from [REDACTED] and [REDACTED], who state that they are the applicant's aunt, uncle and cousin respectively. These affiants all state that they met the applicant in May 1981. Affiants

and fail to provide the circumstances of their meeting with the applicant in May 1981.

Affiant states that she met the applicant in May 1981 in Los Angeles, California. However, the affiant does not explain the circumstances of their meeting in Los Angeles at that time. She goes on to say that they have seen her at family events, "on a recurrent basis."

However, none of the affiants specify the frequency with which they saw the applicant during the requisite period or state whether there were periods of time during the requisite period when they did not see the applicant. It is noted that these affiants all reside in Riverside, California and the applicant has stated that she resided in Dallas, Texas for the duration of the requisite period.

Affiant states that he has known the applicant since May 1981, when the applicant was a neighbor. However, he fails to provide either his address or the applicant's address at the time they were neighbors or to indicate which city or state they resided in at that time. He states that the applicant resided in California and Texas and that he has been in touch with her on a regular basis.

Affiant states that she has known the applicant since May 1981 and that the applicant first resided in Dallas, Texas and that she knows this because the applicant lived next door to her. The affiant provides an address of residence for the applicant during the requisite period and describes time spent together with her during that time.

As is noted above, each of the affiants claims they have known the applicant since before January 1, 1982. However, the affiants do not indicate how they date their initial meeting with the applicant. They further fail to state whether there were periods of time when they did not see the applicant. Affiants from , and all reside in California and states that she first met the applicant in Los Angeles, California. However, she does not provide details regarding this first meeting, which is significant because the applicant has stated that she resided in Texas during the requisite period. Similarly, though states that he was the applicant's neighbor, he does not provide an address of residence for the applicant or for himself during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record also contains a declaration from the applicant's mother, . The declarant explains that in April or May of 1981 she came to the United States with the applicant and the applicant's father. She provides address of residence where she and the applicant resided during the requisite period. However, she does not indicate how she dates the time she first entered the United States with the applicant.

The record also contains the applicant's Form I-687 application, which indicates that the applicant resided in Dallas, Texas for the duration of the requisite period and only began residing in Los Angeles in 1998.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in May 1981, and the applicant's birth certificate. Though the applicant's birth certificate is evidence of the applicant's identity, it does not demonstrate that she entered before January 1, 1982 or that she resided in the United States for the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.