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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-236-16345

Office: HOUSTON

Date: DEC 29 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, Houston. 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 noted that the United States Citizenship and Immigration Service (USCIS) was unable to contact the affiants by phone, although several attempts were made to do so. 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 states that because she was a housewife during the requisite period, the only evidence she has to submit consists of affidavits from family members and friends. She further states that she is submitting a new set of affidavits on appeal in an effort to establish her eligibility for temporary resident status.

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.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on May 24, 2005.

The applicant submitted the following attestations as evidence of her residence during the statutory period:

- An affidavit from [REDACTED] in which he stated that he met the applicant, her husband and her son at the grocery store where he worked in 1983, and that he and the applicant attended the same church from 1985 to 1988. Although the affiant stated that he met the applicant's son in 1983 when he was about six or eight months old, the record of proceeding contains a copy of [REDACTED]'s birth certificate that indicates his date of birth was April 12, 1980.

- An affidavit from [REDACTED] in which he stated that he has been acquainted with the applicant since 1986 when he met her at her church where he attended services.
- An affidavit from [REDACTED] in which he stated that he met the applicant and her family at the Seventh Day Adventist Spanish Church in Houston, Texas in October of 1981 where he was contracted through his company to do gardening and landscaping work. Although the affiant stated that he met the applicant's son in October of 1981 when he was about three or four months old, the record of proceeding contains a copy of [REDACTED] birth certificate that indicates his date of birth was April 12, 1980.
- An affidavit from [REDACTED] in which he stated that he has personally known the applicant since 1981 and that he first met the applicant and her family at the Seventh Day Adventist Spanish Central Church where he was an assistant during the Saturday morning meeting. Although the affiant stated that he met the applicant's son in October of 1981 when he was about three or four months old, the record of proceeding contains a copy of [REDACTED] birth certificate that indicates his date of birth was April 12, 1980.
- An affidavit from [REDACTED] in which she stated that she met the applicant in 1981, that they were living at the same apartment complex at the time, and that they became friends and have visited with each other since then.
- An affidavit from [REDACTED] in which he stated that his parents met the applicant in 1981 when his family traveled from California to Texas where they worked as laborers in the valley from time to time.

The affiants fail to specify the applicant's place of residence during the requisite period. They also fail to provide any detail relating to the circumstances of the applicant's claimed entry into or residence in the United States during the requisite period. Statements made by [REDACTED] and [REDACTED] concerning the applicant's son [REDACTED] age at the time they met the applicant's family are inconsistent with the date of birth that appears on his birth certificate. Given these discrepancies, the affidavits can be accorded only minimal weight in establishing that the applicant resided in the United States for the duration of the requisite period.

In denying the application the director noted that the evidence submitted was not credible or amenable to verification.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. She submits the following attestations:

- A letter from the Senior Pastor of the Seventh-Day Adventist Church in Houston, Texas in which he states that the applicant has been a member of the church since 1981 according to the church records and the testimony of many of the church members. Here,

the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership; it does not state the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- Affidavits from [REDACTED] and [REDACTED] in which they state that they have known the applicant since 1981 when they met her at the Seventh Day Adventist Spanish Central Church. Here, the affiants fail to specify the frequency with which they saw and communicated with the applicant and they fail to specify the applicant's place of residence during the requisite period. The affiants also fail to demonstrate that they have first-hand knowledge of the applicant's initial entry into the United States. Because the affidavits are lacking in detail, they can be afforded only minimal weight in establishing the applicant's claimed residence in the United States throughout the requisite period.
- **An affidavit from [REDACTED]** in which she states that she originally met the applicant at church in Mexico and that she met her again in the United States in 1981. She further states that she would see the applicant on a regular basis. The affiant fails to specify under what circumstances she met the applicant in the United States and she fails to specify the applicant's place of residence during the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for denial. The affidavits initially submitted by the applicant are lacking in detail, and as has been noted by the director, are not amenable to verification. The affidavits submitted on appeal are also lacking in detail sufficient to establish the applicant's claimed residence in the United States for the duration of the requisite 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 this 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 evidence that is lacking in detail and that has little probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.