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U.S. Citizenship  
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Services

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FILE:



MSC 05 194 14417

Office: LOS ANGELES

Date: **JUL 23 2008**

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles, California. 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 April 12, 2005. The applicant was interviewed on October 23, 2006 in connection with her Form I-687. The director denied the application on December 12, 2006. On appeal, the applicant submits a statement and provides documents previously submitted. The AAO has reviewed the record in its entirety before issuing this decision.

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 credible 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 Form I-687, the applicant indicated her last entry into the United States was in November 1981 and that she had left the United States in September 1987 to visit her family in Mexico and returned to the United States that same month. The applicant listed her addresses for the pertinent time period as: [REDACTED] Katy, Texas from November 1981 to December 1983; [REDACTED] Houston, Texas from December 1983 to July 1985; [REDACTED] Los Angeles, California from January 1985 to July 1985; [REDACTED], Kettleman City, California from August 1985 to December 1986; and [REDACTED] Los Angeles, California from August 1987 to 1989. The applicant indicates that she worked for [REDACTED] as a babysitter from November 1981 to 1983 and did not work again in the United States until 1989.

The record includes the following documentation regarding the applicant's location during the pertinent time period:

- An affidavit dated January 14, 1991, signed by [REDACTED] and [REDACTED] who declare that the applicant lived at [REDACTED], Katy, Texas from November 5, 1981 to December 1983 and worked as the affiants' babysitter.
- A photocopy of a birth certificate for the affiant's child, [REDACTED], showing the child's date of birth as November 20, 1983 in Houston, Texas.
- An affidavit dated February 16, 2005 signed by [REDACTED] who declares that the applicant lived at [REDACTED], Kettleman City, California from August 1985 to December 1986 and that the applicant worked as the affiant's babysitter.

The record also includes photocopies of envelopes addressed to the applicant including:

- An envelope addressed to the applicant at [REDACTED] Houston, Texas with a postmark of October 2, 1983. The stamp on the envelope is not discernable.

- An envelope addressed to the applicant at [REDACTED], Houston, Texas with a postmark of December 7, 1983;
- An envelope addressed to the applicant at [REDACTED], Houston, Texas with a postmark of March 12, 1984 – the envelope is from the Houston Mayor's office;
- An envelope addressed to the applicant at [REDACTED], Houston, Texas with a postmark of July 18, 1984 and an indiscernible stamp;
- An envelope addressed to the applicant at [REDACTED] Los Angeles, California with a postmark of (illegible month) in 1987;
- An envelope addressed to the applicant at [REDACTED] Los Angeles, California with a postmark of May 2, 1988; and,
- An envelope addressed to the applicant at [REDACTED] Los Angeles, California with an indiscernible postmark.

The record also includes a photocopy of a money order receipt dated February 16, 1988 issued to the applicant; a postal registration receipt dated September 29, 1987; a receipt for an application for ID renewal from the California Department of Motor Vehicles dated December 9, 1987; and a baptismal certificate for the applicant's child, [REDACTED] born in Houston, Texas on November 20, 1983 dated September 8, 1984.

The record further includes a translation of the applicant's sworn statement signed on October 23, 2006 at the applicant's interview at the Citizenship and Immigration Services (CIS) offices. The applicant declares that she entered the United States in 1981 through Laredo, Texas, that she went to Mexico in 1986 or 1989; that she does not have much proof of what she did between the years 1981 and 1988 because a notary who helped her with her application kept all her papers. The record also contains evidence of the applicant's arrest for attempted illegal entry into the United States in 1997.

On December 12, 2006, the director determined that the applicant did not continuously reside in an unlawful status in the United States for the entire requisite time period.

On appeal, the applicant asserts that she has lived in the United States since 1981, first in Texas and then that she moved to California in 1987 (not 1981). The applicant indicates that she was very nervous during her interview and was confused regarding her travel dates to Mexico. The applicant also reiterates that she does not have additional proof of her continuous residency in the United States.

The AAO has reviewed the declarations and other documents submitted on the applicant's behalf and finds that the applicant has not presented sufficient evidence of her entry into the United States prior to January 1, 1982 and continuous residence in the United States for the applicable time period. The AAO acknowledges that the applicant has presented an affidavit signed by [REDACTED] and [REDACTED] who declare that she lived with them and worked for them from November 5, 1981 to December 1983. The affidavit, however, does not provide sufficient detail describing how the applicant and the affiants met or evidence of the circumstances and events and subsequent interactions with the applicant. Although the affiants indicate they employed the applicant as a babysitter, the affiants have not provided any documentary evidence corroborating the employment relationship. The affidavit is insufficiently detailed

to substantiate the applicant's statement that she entered the United States prior to January 1, 1982 and resided in the United States with the affiants until December 1983. Moreover, the affidavit also lacks the essential corroborative details that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) specifies for letters of attestations from employers, including a declaration that the information was taken from company records, identifying the location of such company records and a statement whether such records are accessible or in the alternative state the reason why such records are unavailable. The applicant's inability to obtain an authentic letter of employment seriously detracts from the credibility of her claim of continuous unlawful residence beginning prior to January 1, 1982 and continuing to December 1983.

The AAO observes that the applicant has established that she was in the United States in Houston, Texas in November 1983 when she gave birth to her son. The record does not contain probative evidence that the applicant continued to live in the United States in 1984 and 1985. In this regard, other than the applicant's statement, the record contains only two envelopes addressed to the applicant in Houston, Texas that bear postmarks in March and July 1984. The envelope addressed to the applicant from the Houston Mayor's office is a photocopy and thus cannot be adequately reviewed. Further, the applicant has not provided information discussing the content March 1984 envelope. The July 1984 envelope, also a photocopy, does not include a discernible stamp. The envelopes submitted do not include evidence that the applicant continuously resided in the United States during the 1984-1985 time period.

The AAO has also reviewed the affidavit dated February 16, 2005 signed by Maria Andrade who declares that the applicant lived at the [REDACTED] Kettleman City, California from August 1985 to December 1986 working as the affiant's babysitter. As with the affidavit of [REDACTED] and [REDACTED] the affidavit does not provide sufficient detail describing how the applicant and the affiant met or evidence of the circumstances and events and subsequent interactions with the applicant. Although the affiant states that she employed the applicant as a babysitter, the affiant has not provided documentary evidence corroborating the employment relationship. Moreover, the applicant did not include this "employment" on her Form I-687. The affidavit is insufficiently detailed to establish that the applicant resided with [REDACTED] and acted as her babysitter in 1985 and 1986 and conflicts with the applicant's indication that she did not work during the 1983 to 1989 period.

The AAO has further reviewed the envelopes and receipts dated in 1987 and 1988 and although these documents provide some information that the applicant was in Los Angeles, California during this time period, the receipts are not probative as they cover independent one-time events and do not include the totality of 1987 and 1988. Similarly, the envelopes submitted do not include evidence that the applicant had continuously resided in the United States in 1987 and 1988. These documents are not supported with evidence of continuous residence in the United States.

The AAO finds upon a review of all the evidence of record that the applicant has not established her entry into the United States before January 1, 1982 and her continuous residence in the United States in an unlawful status for the requisite time period. 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 evidence of record, it is concluded that 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.