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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-082-11386

Office: PHILDELPHIA

Date: **JUL 30 2008**

IN RE: Applicant: [REDACTED]

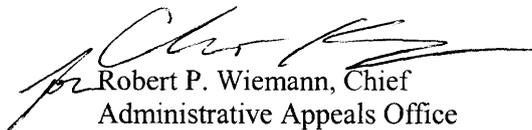
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.


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, Philadelphia. 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 on November 30, 2006. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence during the requisite period. Specifically, the director stated that the affidavits submitted by the applicant in support of her application were “of very poor quality, illegible and provide no specific details of events and absolutely no documentation to support their claims.” The director also stated that “[c]redible affidavits are those which include some document identifying the affiant, some proof that the affiant was in the United States during the statutory period, some proof that there was a relationship between you and the affiant.”

On appeal, counsel asserts that the affidavits submitted by the applicant were sufficiently detailed and verifiable and further asserts that the director erred in requiring the applicant to produce additional documentation to support the affidavits.

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)(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).

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 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, 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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 21, 2005. The applicant has also submitted the following documents in support of her application:

- Affidavit of [REDACTED] signed and notarized on January 25, 2006. The affiant claims to have personal knowledge of the applicant’s residences during and after the requisite period. The affiant states that he used to see the applicant at an annual holiday function and at social gatherings. The affiant fails to provide significant details of his relationship with the applicant, such as how or when he met the applicant, or the nature and frequency of his contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and **notarized on February 19, 2006**. The record also contains a second written statement signed by [REDACTED] which is not notarized or dated. The affidavit lists the applicant’s addresses from November 1981 until August 1999 and contains a typed statement that reads “Acquaintance with the applicant in the United States from the following facts, we have met in community function, social and cultural gathering. He/she is a person of good moral character.” The written statement provides some additional detail in that it states that the affiant met the applicant at a restaurant, that they became good friends after that and that the affiant ran into the applicant two years ago when the applicant was working at A-Plus. The applicant has not listed employment at A-Plus on her Form I-687 application. More significantly, the affidavit and the written

statement lack probative details. For example, the affiant does not state when he met the applicant or describe the nature and frequency of his contact with the applicant during the requisite period. In addition, the affiant states that he met the applicant in August 1986, but fails to explain how he knows where the applicant resided from November 1981 until the time that he met the applicant. The affiant also indicates that, at some point, he lost contact with the applicant because he states that he and the applicant "ran into each other" two years ago. This statement further calls into question whether the affiant has personal knowledge of the applicant's residence during the requisite period. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Statement which appears to be from the applicant on behalf of [REDACTED] Counsel states that the statement is from [REDACTED] however this does not appear to be correct. This statement is not signed, dated or notarized. The substantive portion of this statement simply states "I know it to be a fact that [REDACTED] did resided [sic] and maintained residence at [REDACTED] As this does not appear to relate to the applicant's residence during the requisite period, this statement has no probative value. Even if the statement is intended to relate to the applicant, as counsel suggests, it is significantly lacking in probative detail. The declarant fails to explain how he met the applicant, how he dates his initial acquaintance with the applicant or provide any details regarding the nature and frequency of his contact with the applicant. Because of these deficiencies this statement can be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

As noted above, in denying the application the director stated that a credible affidavit is one which includes "some document identifying the affiant, some proof that the affiant was in the United States during the statutory period, some proof that there was a relationship between you and the affiant." Counsel argues that the director placed additional burdens on the applicant by requiring such documentation, and notes that such a requirement does not appear anywhere in the regulations. Counsel is correct that such documentation is not required. Rather, the weight of an affidavit depends on the totality of the circumstances. Affidavits containing specific, personal knowledge of the applicant's residence during the requisite period will be given greater weight than affidavits providing only generic information. In this case, as explained above, the affidavits provided by the applicant did not contain any specific information regarding either the affiant's relationships with the applicant or the applicant's residence during the requisite period. The affidavits were therefore insufficient to meet the applicant's burden of proof.

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 his 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 documents with minimal probative value, it is concluded that he 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.