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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-098-10148

Office: BALTIMORE

Date: **JUL 31 2008**

IN RE: Applicant: [REDACTED]

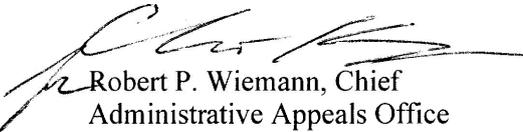
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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, Baltimore. 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. Specifically, the director noted that the affidavits submitted by the applicant lacked sufficient detail to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States thereafter. The director also noted inconsistencies in the record which cast doubt on the submitted evidence. 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 contests the findings of the director stating that the inconsistencies noted by the director in the decision are easily resolved. She indicated that she was a class member, that she did sign and file the Form I-687, and that the dates of her residency were simply confused by the declarant's offering statements 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)(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 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 a Form I-687 application was submitted along with the Supplement to Citizenship and Immigration Services (CIS) on January 6, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] from July 1980 until 1990.

The applicant submitted the following documentation:

A declaration from [REDACTED] who stated that he is a United States citizen living in [REDACTED]. He indicated that he has known the applicant since “approximately 1979,” and that at the time he met her, the applicant was living in Silver Spring, Maryland. He also stated that in the late 1990s the applicant moved to Atlanta,

Georgia for a few years. As noted by the director, the dates of the applicant's residency that the declarant provided are inconsistent with the dates that the applicant provided on her I-687 application. Specifically, the applicant testified in her interview with Citizenship and Immigration Services (CIS) on September 28, 2006 that she entered the United States from Canada in 1980, not 1979. Furthermore, the applicant does not list any residence outside the state of Maryland on her Form I-687 application. She does not indicate ever living in Georgia. On appeal, the applicant explained that she was actually living in Maryland during the period in question and that she merely visited friends in Georgia. The inconsistencies noted cast doubt on the reliability of the declaration and it will be given nominal weight.

- A letter, dated March 23, 2006, from [REDACTED] who indicated that he is a United States citizen residing in Riverdale, Georgia. [REDACTED] indicated that he has known the applicant since 1982 and that she lived in [REDACTED] and also in Atlanta. The statement lacks any details that would lend credibility to an alleged 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with her. This declaration will be given nominal weight.

A form declaration from [REDACTED] who indicated that he resides in Union, New Jersey. He provided no details of his relationship with the applicant, nor did he indicate how he dates their initial acquaintance, how frequently he saw the applicant during the requisite period, or the basis of his alleged knowledge of the applicant's residence in the United States between 1981 and 1987 apart from unspecified "personal contacts." Thus, this declaration will be given nominal weight.

A declaration from [REDACTED] of Lagos, Nigeria. The declarant indicated that he met the applicant in 1982 when she used to visit a mutual friend, Sunday Ugwuoke, at George Washington University. He provided no further information regarding the applicant's residence in the United States, her initial entry or the frequency of their contact. Like the above declarations, this declaration will be given nominal weight.

In addition to the deficiencies explained above, the director noted an additional inconsistency in the record which cast doubt on the reliability and credibility of this application.

The director noted that the applicant's signature on her Form I-687 application did not match the signature found on her passport, and that stamps in the applicant's passport indicate that she was not present in the United States in December of 2005 when the application was signed or in January 2006 when it was filed. This issue was not addressed by the applicant on appeal.

In summary, the applicant has not provided sufficient evidence of residence in the United States for the requisite period or of entry to the United States before January 1, 1982 except for her own

inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has 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.