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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC-05-292-20714

Office: NEW YORK

Date: JUN 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. 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.

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, New York. 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 July 19, 2005 (together, the I-687 Application). 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 noting that the documentation submitted was “insufficient to overcome the grounds for denial” specified in the March 10, 2006 notice of intent to deny the application. The director denied the application as 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 counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a brief. Counsel stated that “the applicant provided sufficient proof of her eligibility under the program.” Counsel also stated that “because of the applicant’s undocumented status, it was not possible” for her to have every document in her name. As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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 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. 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 furnished sufficient credible evidence to demonstrate that she entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on July 19, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as [REDACTED]

New Jersey, from August 1981 to May 1994. At part #33, she listed her first employment in the United States as a waitress in Little Falls, New Jersey, from November 1981 to March 1986. At part #32, the applicant listed one absence from the United States since entry. According to the Form I-687, the applicant visited Canada for one week from January 1987 to January 1987.

The applicant has provided two letters and a copy of her visitor's visa issued on March 17, 1994 in [REDACTED]. In her decision, the director noted that the applicant omitted an absence from the United States at part #32 to the Form I-687 as evidenced by the visitor's visa issued in Kuala Lumpur on March 17, 1994. On appeal, counsel states that the applicant omission was a "mere inadvertence and not contradictory." The AAO finds that this discrepancy is not material to the issue of the applicant's residence during the requisite period. Accordingly, the discrepancy has no part in the AAO's consideration of the merits of this case. The following evidence relates to the requisite period:

- A letter from [REDACTED] dated February 18, 2006. The declarant states that she lives in Brooklyn, New York. The declarant states that she has known the applicant since 1981 and was introduced to her "at a Christmas party." The declarant adds that she and the applicant "have been in touch all these years and have been to dinners, trips, and other forms of entertainment together." Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. Furthermore, although not required, but mentioned in both the director's notice of intent to deny and decision, there is no evidence in the record of proceeding that the declarant resided in the United States during the requisite period. **Finally, the letter is not notarized. Given these aspects, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.**
- A letter from [REDACTED] dated February 10, 2005. The declarant states that he lives in Jersey City, New Jersey. The declarant states that he has known the applicant since 1981, that she was his "co-worker" and that they have "kept in touch since then." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant on the job in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Also, the declarant does not specify where the applicant has been since they worked together, and he does not assert knowledge about where the applicant has resided. Furthermore, although not required, but mentioned in both the director's notice of intent to deny and decision, there is no evidence in the record of proceeding that the declarant resided in the United States during the requisite period. **Finally, the letter is not notarized. Given these aspects, this statement has minimal probative value in supporting the applicant's claims that she**

entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States without inspection in 1981 and to have resided for the duration of the requisite period in New York. The AAO concurs with counsel that the director erred in finding that the applicant contradicted herself by stating that she first entered the United States through Canada and that she first entered the United States through New York, New York. Therefore, the AAO withdraws that finding. Strictly read, the statement about entry through Canada only refers to the country last transited before entry to the United States; the statement about entry through New York, New York is the only one of the two statements that specifies the actual point of entry into the United States. As such, the statements are not contradictory. From them the AAO draws no negative inference about the merits of this application.

The director issued a notice of intent to deny (NOID) on March 10, 2006. The director denied the application for temporary residence on June 17, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, counsel stated that "the applicant provided sufficient proof of her eligibility under the program." Counsel also stated that "because of the applicant's undocumented status, it was not possible" for her to have every document in her name. Neither counsel nor the applicant have submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 lack of credible and probative supporting documentation, it is concluded that the applicant 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.