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FILE: [Redacted]
MSC-06-098-11844

Office: LOS ANGELES, CALIFORNIA

Date: **MAY 30 20**

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:



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 Records 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, 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. The director determined that the applicant had not established by a preponderance of the evidence that she had entered into the United States before January 1, 1982, or continuously resided in the United States in an unlawful status for the duration of the requisite period. 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, counsel asserts the director's decision is not supported by the evidence in the record. Further, counsel contends that the "inconsistencies found in [the applicant's] testimony and application occurred as a result of the miscommunication between the applicant and the interviewing officers in 1995 and 2006."

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 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 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 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 established, by a preponderance of the evidence, that she had entered into the United States before January 1, 1982, and continuously resided in the United States in an unlawful status for the duration of 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 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 showed her first address in the United States to be in [REDACTED], Corona, California from 1981 to 1990. Similarly, at part #33, she showed her first employment in the United States to be for [REDACTED], Corona, California as a baby sitter and housekeeper from 1981 to 1991. According part #3 of the Form I-687 application, the applicant was born on December 25, 1968, therefore the applicant was 13 years of age in 1981.

The applicant submitted the following documentation as listed and discussed below:

- An affidavit dated October 4, 1993, by [REDACTED], an aunt of the applicant, stating that the applicant resided continuously in the United States since March 1981 except for one absence from the United States from May 2, 1987 to June 2, 1987.
- Another statement from by [REDACTED], of Corona, California, who stated that according to her personal knowledge the applicant resided continuously in the United States since March

1981. She stated that according to her personal knowledge the applicant resided continuously in the United States since March 1981 except for one absence out of the United States from May 2, 1987 to June 2, 1987.

- Two affidavits, dated September 18, 2005, and September 29, 1993, by [REDACTED], (the aunt of the applicant) who stated that the applicant lived with her in the United States from March 1981 until November 1990 as her babysitter. She stated that the applicant was absent from the United States from May to June 1987.
- Three airmail envelopes post marked April 13, 1981, August 26, 1988 and May 13, 1993 sent to the applicant at Corona, California from Mexico.
- A drug prescription written by [REDACTED], on May 11, 1987 naming the applicant as patient.
- An undated statement from [REDACTED] (the aunt of the applicant) of Corona, California, that she has personal knowledge that the applicant resided in the United States since March 1981 and she frequently spent time with the applicant between 1982 and 1988. She stated she resided at [REDACTED] Corona, California, when the applicant came to the United States.

On May 9, 2006, the director issued a request for evidence (RFE) to the applicant. The RFE requested that the applicant submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters.

Specifically, the director requested a statement from the U.S. Social Security Administration listing the years that the applicant worked and her earnings.

In response the applicant submitted a statement of earnings history for 2004 and 2005 and a note dated June 6, 2006, that upon her request the Social Security Administration was up-dating the “years that I worked” and that she required one more month to provide a complete statement.¹

¹ On appeal the applicant submitted a Social Security Administration earnings record statement dated June 26, 2006 that stated her earnings from 1991 through 2002 but not for the requisite period.

Further, the director requested the original or certified court disposition for any and all arrests that the applicant had. According to the evidence in the record, the applicant was arrested on April 6, 1994 and charged with violating section 20001 of the California Vehicle Code (VC), *hit and run: death or injury*, and section 12500(a) VC, *unlicensed operator*. She was convicted of both misdemeanor offenses. She subsequently admitted to a probation violation on April 8, 1994 and was ordered to serve 30 days in county jail. Case No. [REDACTED] The applicant was sentenced to a period of probation from April 8, 1994 to December 22, 2014.

The director denied the application, finding the evidence insufficient to establish that the applicant was eligible for temporary resident status. The director further found that there were discrepancies in the applicant's testimony as to the date of her initial entry into the United States. The director noted that on May 9, 2006, the applicant stated under oath that she first entered the United States on March 1981. He further noted that on May 22, 1995, the applicant testified under oath that she first entered the United States on January 1, 1990. Finally, the director found that the declarants' statements did not establish personal knowledge of the applicant's residency during the requisite period.

On appeal, counsel asserts that the evidence submitted demonstrates that applicant did arrive in the United States in 1981, and emphasizes that inconsistencies found in the applicant's testimony and application were as a result of a miscommunication between the applicant and the interviewing officers in 1995 and 2006."

Counsel submitted a brief in support of the appeal. According to counsel, CIS produced documentary evidence during an interview held on May 9, 2006, that the applicant had previously testified under oath in 1995 that the applicant had initially entered the United States in the month of January of 1990.

Counsel contends that the lack of documentary evidence submitted by the applicant in this matter before January 1, 1982, can be explained because upon the applicant's entry into the United States in March of 1981, she only intended to remain for two years. According to counsel this intent is the reason why the applicant did not apply for a California identification card or register for a social security number at that time. According to counsel, the applicant was employed as a "live-in housekeeper by her aunts" from March of 1981, at the age of 13, until January of 1990, and was not issued pay stubs by them because the applicant did not have appropriate identification. According to counsel, the applicant later decided to reside in the United States and not return to Mexico.

Counsel asserts that the applicant has submitted sworn declarations testifying to the applicant's physical presence in the United States (from [REDACTED] and [REDACTED] above mentioned), and several photographs reputedly depicting her with family members and friends during the years 1981 and 1989. Counsel submitted six copies of photographs of individuals with their faces dark and obscured. The photographs are not labeled identifying the picture subjects, when or where the pictures were taken, nor date stamped. Along with the photocopy sheets was a separate note in Spanish dated January 8, 1982. It is not possible to determine information from the poor quality photocopies.

Counsel has submitted on appeal the CIS report dated May 22, 1995, of the applicant's interview under oath in the presence of an interpreter before a CIS officer relating to her I-687 application. That CIS report stated "You [the applicant] have stated under oath orally and in writing that your initial entry into the United States was made Jan. 1, 1990." As already mentioned by counsel, the applicant also testified under oath in the presence of an interpreter before a CIS officer on May 9, 2006, that her initial entry into the United States was on January 1, 1990. According to counsel, the applicant "believes that this misunderstanding may have resulted from a mistranslation at both interviews." Counsel states that the applicant disavows the report of her CIS interview of May 9, 2006. Counsel states that the applicant "may have been coerced to sign a declaration she did not understand or signed the document without knowing what it contained." It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As already stated, the applicant submitted an affidavit and statement from the applicant's aunt [REDACTED] who indicated that the applicant resided with her as a live-in babysitter from March 1981 until November 1990. In 1981, the applicant was of school age; hence, the applicant could have submitted school records,² medical records or other forms of legal documentation showing she were in the United States during the statutory period. No such records were submitted.

Three other statements, two by [REDACTED] and one by [REDACTED] were also submitted by the applicant to demonstrate the applicant's entry into the United States prior to January 1, 1982. These statements do not provide detail regarding how and when the applicant and the affiants met, their frequency of contact during the requisite period, and the applicant's address during the requisite period. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Evidence submitted by the applicant will be reviewed according to its probative value and credibility. The affidavits lack sufficient detail to confirm that the applicant resided in the United States during the requisite period and they have slight probative value in this matter.

The applicant submitted two postmarked envelopes post dated April 13, 1981, and August 26, 1988 and addressed to the applicant at Corona, California. The envelopes are given some weight. The

² See the regulation at 8 C.F.R. § 245a.2(d)(3)(iii).

applicant also submitted a Social Security Administration earnings record statement dated June 26, 2006 that stated her earnings in the United States from 1991 through 2002.

The applicant had not established by a preponderance of the evidence that she had entered into the United States before January 1, 1982, or continuously resided in the United States in an unlawful status for the duration of the requisite period. The statements and affidavits lack credibility and probative value for the reasons noted. Also, the applicant's conflicting testimony regarding the date of her initial entry undermines the credibility of her assertions.

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 he has failed to establish by a preponderance of the evidence that he 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.