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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: BOSTON

Date:

NOV 12 2008

MSC-06-090-10071

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.

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, Boston. 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief through counsel. Counsel asserts that the applicant was a victim of immigration fraud. He states the individual who completed the applicant's paperwork erroneously completed the applicant's paperwork that her errors should not be held against the applicant. He provides an account of the applicant's immigration history during the requisite period.

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) 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.

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the

United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 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 satisfied her burden of proving that she (1) entered the United States before January 1, 1982 and (2) continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 29, 2005. 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 stated that during the requisite period she resided: in Leominster, Massachusetts from May 1981 to March 1983; in Salem, Massachusetts from April 1983 until April 1987; and in Livingston, New Jersey from April 1987 to June 1988. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent twice during the requisite period, once from March to April in 1983 and then from April 1983 to August 1996. It is noted that this absence constitutes a single absence from the United States that exceeds 45 days. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that she was first employed as babysitter in New Jersey from April 1987 to June 1988. It is noted that this period of employment occurred during a time that the applicant previously stated she was absent from the United States.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes indicate that the applicant stated that she first entered the United States in 1980 through San Diego without inspection. She further stated that her first absence from the United States was in the beginning of 1989. The applicant also stated that both she and her attorney never saw her application and that it was filed by someone named [REDACTED]

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In support of her claim that she resided in the United States for the requisite period, the applicant submitted the following:

- A declaration from the applicant dated February 4, 2007. The applicant states that she and her mother left Brazil in 1980. She details her route into the United States and states that once she entered the United States, she went with her mother to Modesto, California where her mother worked picking vegetables. She states that she resided in the United States from the date she first entered until the beginning of 1989.

- A photocopy of the applicant's father's death certificate and its English translation, which indicate that the applicant's father passed away on January 7, 1989 in Brazil.
- An affidavit from the applicant's mother dated March 28, 2005, in which the affiant states that she would like to be included as a class member.
- A declaration from the applicant's mother, who states that she arrived in the United States on August 13, 1981. She recalls her residence in the United States during the requisite period. She refers to her son, who she states resided in the United States for ten years. However, the declarant does not refer to the applicant's residence in the United States during the requisite period. It is noted that the applicant testified under oath before a CIS office that she first entered the United States with her mother in 1980. It is further noted that the applicant also submitted a declaration in February 2007 on which she reiterated that she and her mother left Brazil in 1980.
- Affidavits and declarations that attest to the applicant's mother's residence in the United States as follows:
  - An affidavit from [REDACTED], who states that she is both a citizen of the United States and Brazil. She states that she met the applicant's mother in 1980 at a church in Brazil. She states that an American Pastor helped the applicant's mother come to America in August 1981. She states that the applicant first came to Modesto, California where she worked on a farm for three months. The affiant asserts that she was informed that the applicant then moved to Providence Rhode Island where she resided on [REDACTED] from December 1981 to November 1986, when she moved to Hudson, Massachusetts. As previously noted, the applicant has testified and submitted a declaration in which she stated that she and her mother began to reside in the United States in 1980.
  - An affidavit from [REDACTED], who states that he has known the applicant's mother for 25 years. He states that he met her in approximately 1980 in a church in Brazil. He states that the applicant's mother entered the United States in August 1981 and then began to work in Modesto, California for three months. He states that the applicant then moved to Rhode Island in December 1981 and resided there for almost five years, until she moved to Hudson Massachusetts with a friend. As previously noted, the applicant has testified and submitted a declaration in which she stated that she and her mother began to reside in the United States in 1980.
  - Second affidavits from [REDACTED], and [REDACTED], who state that they knew an applicant's parents and that the applicant's parents were discouraged from filing for legalization during the original filing period. However, these affidavits do not indicate the name or A number of the applicant to whom the affiants are referring.

- An affidavit from [REDACTED], who resides in Brazil and submits a photocopy of his Brazilian identity card. The affiant states that he resided in the United States from March 1981 until May 1987. He states that on December 11, 1981, the applicant's mother arrived in Providence, Rhode Island, where he was working. He states that she worked as a babysitter and resided in Providence until the end of 1986.
- An affidavit from [REDACTED] who resides in Brazil and submits a photocopy of his Brazilian identity card. The affiant states that the applicant's mother resided in the United States from the beginning of August 1981 until January 1989. He states that the applicant's mother had eight children and some of her children were raised in an orphanage. He goes on to say that the applicant's mother first worked on a farm, but then decided to move to Rhode Island. The affiant states that because the applicant's mother was missing her children and because the applicant's father was ill, she returned to Brazil in 1989. Though the affiant mentions the applicant's mother's oldest child, it is not clear what the name of this child was or where the child resided during the requisite period. As previously noted, the applicant has testified and submitted a declaration in which she stated that she and her mother began to reside in the United States in 1980.
- An affidavit from [REDACTED], who resides in Brazil and submits a photocopy of her Brazilian identification card with her affidavit. The affiant states that she remembers that the applicant's mother attended the "First Baptist Shalom" church at the end of July or August of 1981, where she met an American Pastor who helped her to travel to the United States. The affiant states that the applicant's mother resided in the United States until January 16, 1989. As previously noted, the applicant has testified and submitted a declaration in which she stated that she and her mother began to reside in the United States in 1980.
- An affidavit from [REDACTED], who resides in Brazil and submits his Brazilian identity card with this affidavit. The affiant states that he remembers that the applicant's mother departed for the United States in 1981. He states that she went to Modesto California, but decided to move with friends to Rhode Island after living in California for three months. He states that the applicant's mother returned home in 1989. Though this affiant discusses the applicant's mother's residence in the United States, he does not state whether the applicant resided in the United States or elsewhere during the requisite period. As previously noted, the applicant has testified and submitted a declaration in which she stated that she and her mother began to reside in the United States in 1980.
- Photocopies of correspondence addressed to the applicant's mother, [REDACTED] as follows:

- A photocopy of a March/April 1980 newsletter addressed to both the applicant and her mother in Modesto, California. Though this newsletter is addressed to the applicant and her mother, no postmark date is indicated on the newsletter. Though there is a notation on this correspondence that indicates that the applicant's mother received it in January 1980, it is noted that this is not consistent with the affidavits of [REDACTED] and [REDACTED] who both state that the applicant's mother did not leave Brazil for the United States until sometime in 1981. It is further noted that the applicant's mother herself stated in a declaration that she did not arrive in the United States until August 1981.
- A newsletter titled, "[REDACTED]" that indicates it was published in January 1986. This newsletter bears the applicant's mother's name and an address in Providence, Rhode Island. However, there is no postmark date on this newsletter to indicate whether it was sent to her.
- A holiday Catalog for the Fellowship on Reconciliation International that indicates it corresponds with July and August of 1987. The catalog bears the applicant's mother's name and address in Hudson, Massachusetts.
- Photocopies of correspondence addressed to the applicant's current mother-in-law as follows:
  - A photocopy of an envelope addressed to [REDACTED] at [REDACTED] in Boston that bears a postmark date of March 29, 1984.
  - A photocopy addressed to "The wonderful women at [REDACTED]." in Boston that bears a postmark of March 3, 1984.
  - A photocopy of a postcard to [REDACTED]?" who resides at [REDACTED] in Boston Massachusetts that is dated March 11, 1987. It is noted that [REDACTED] is the first name of the applicant's mother-in-law.
- Photographs as follows:
  - Photographs that indicate that they are of the applicant during at 1983 trip to Disneyland. Though this photograph is probative evidence that the applicant was present in the United States for a trip to Disneyland in 1983, it does not establish her residence in the United States during the requisite period.
  - A photograph of what appears to be the applicant as a young girl that is labeled, "Irlene and members of the church." Though this photograph appears to feature the applicant, it is not clear where this photograph was taken or whether it was taken in

the United States. Therefore, it carries no weight as evidence of the applicant's residence in the United States during the requisite period.

- A photograph of a man and a woman, the back of which is dated August 1983. Because it is not clear who is featured in this photograph or where it was taken, this photograph carries no weight as evidence of the applicant's residence in the United States during the requisite period.

It is noted that the applicant also submitted evidence that does not pertain to her residence in the United States during the requisite period. As that evidence is not relevant to the matter at hand, it is not detailed here.

The director denied the application for temporary residence on February 21, 2007. The director stated that the applicant's Form I-687 and her interview testimony were not consistent, as her Form I-687 states that she was absent from the United States from April 1983 until August 1996, but did not mention this absence at the time of her interview with the CIS officer. The director noted that the applicant testified that another individual completed her Form I-687. However, there is no signature on the application that verifies this claim. The director also found that the evidence submitted by the applicant was not sufficient to meet her burden of proof.

On appeal, the applicant submits a brief through counsel. In it, counsel asserts that the applicant was a victim of immigration fraud. He states that the individual who completed the applicant's paperwork has been the subject of an investigation by the Department of Homeland Security and the fact that she erroneously completed the applicant's paperwork should not be held against the applicant. He provides an account of the applicant's immigration history during the requisite period, stating that the applicant first entered the United States in August of 1981.

With the brief, the applicant also submitted a declaration from her husband, [REDACTED]. The declarant states that he first entered the United States on August 13, 1981 with his mother. He states that they first stayed with the applicant's mother in Modesto, California. He states that he resided in Modesto for three months, after which time he, his mother, and the applicant's mother moved to Providence, Rhode Island. He states that he currently resides with the applicant. It is noted that the declarant does not state whether the applicant resided in the United States for part of all of the requisite period. Therefore, this declaration does not carry any weight as evidence that she did so.

The applicant also submitted other evidence in support of her husband's claim of his residence in the United States during the requisite period, including additional correspondence addressed to his mother, and school documents. However, this evidence is not relevant to the applicant's own claim.

In summary, even when the inconsistencies between the applicant's testimony and her Form I-687 are set aside, the applicant has not satisfied her burden of proof. Though the applicant has

submitted affidavits attesting to her husband's, her mother's and her mother-in-law's, presence in the United States during the requisite period, she has not submitted consistent evidence of her own residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period. Though the applicant has consistently stated that she and her mother entered the United States in 1980 and began residing in the United States since that time, she has submitted affidavits from affiants who all state that the applicant's mother arrived in the United States in or about August 1981. The applicant's counsel has also stated in his brief submitted on appeal that the applicant first arrived in the United States in August 1981. However, in support of her application, the applicant has submitted correspondence that she asserts was sent to her mother in Modesto, California in January 1980.

This inconsistency casts doubt on the when the applicant first entered the United States and whether she has submitted credible documents in support of her application.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, though the applicant has submitted affidavits and declarations from individuals, including her own mother, that attest to her mother's presence in the United States during the requisite period, these affidavits and declarations are silent as to whether the applicant resided in the United States during that period. In light of the paucity of the evidence submitted by the applicant and the inconsistency regarding her first entry into the United States, the applicant has not satisfied her burden of proof. 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.