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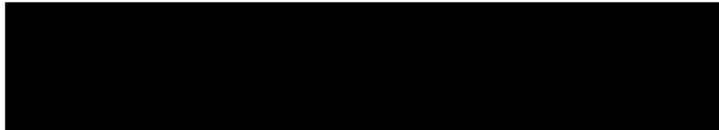
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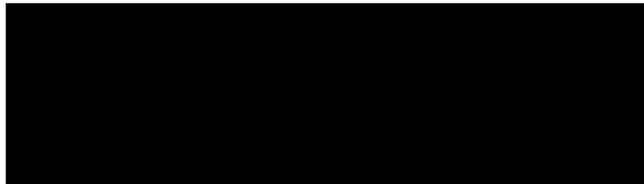
IN RE:

Applicant:



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 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 Director, Milwaukee, Wisconsin, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the requisite period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate her residence in this country the period in question. Counsel objects to the director's treatment and analysis of documentation submitted in response to the notice of intent to deny. Counsel provides copies of previously submitted documentation as well as new documents in support of the appeal.

It is noted that the record shows that the applicant possessed another separate A-file, [REDACTED] which has been consolidated into the current record of proceedings. The record reflects that the applicant was placed into removal proceedings on April 22, 1998. On April 2, 1999, the Immigration Judge granted the applicant voluntary departure until August 1, 1999 with an alternate order of removal after such date. The record shows that the applicant complied with the grant of voluntary departure and departed the United States by plane to Mexico on August 1, 1999.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the

class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

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 (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 the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 26, 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 listed [REDACTED] in Chicago, Illinois from June 1981 to December 1981, [REDACTED] in Chicago, Illinois from January 1982 to June 1982, and [REDACTED] in Chicago, Illinois from June 1982 to April 1989. Further, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant indicated that she was employed as a cook at El Tipico Restaurant at [REDACTED] in Chicago, Illinois from January 1982 to October 1992.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] Ms. [REDACTED] stated that she first met the applicant December 14, 1981 and they had a good friendship since that date. While Ms. [REDACTED] was able to recall the exact date she initially met the applicant, she did not attest to any additional information relating to their first meeting such as where and how they had first met. In addition, Ms. [REDACTED] failed to provide any other specific details or verifiable testimony to corroborate the applicant's residence in the United States since prior to January 1, 1982.

The applicant included an affidavit signed by [REDACTED] who declared that the applicant lived with her at [REDACTED] in Chicago, Illinois from June 1981 to December 1981. However, the number of the street address, [REDACTED], where [REDACTED] testified that she and applicant lived together from June 1981 to December 1981, does not correspond to the number of the street address, [REDACTED], listed by the applicant as her residence for this same period at part #33 of the Form I-687 application. Neither the applicant nor [REDACTED] advanced an explanation to address this discrepancy. Moreover, [REDACTED] failed to attest to the applicant's residence in this country after December 1981 through May 4, 1988.

The applicant provided a declaration that is signed by [REDACTED] Ms. [REDACTED] indicated that she and the applicant had been friends since the applicant arrived from her country of Mexico in June 1981. Ms. [REDACTED] noted that the applicant had lived in this country since such date. Although [REDACTED] attested to the applicant's residence in this country since June 1981, she failed to provide any relevant and verifiable testimony to substantiate the applicant's claim of residence in the United States for the requisite period.

The applicant submitted a letter dated January 6, 1991 on letterhead stationary that is signed by [REDACTED]. Dr. [REDACTED] noted that the applicant had been a patient of his since November 1981. However, the testimony of [REDACTED] is of limited probative value as it was not

accompanied by any corresponding medical or business records reflecting his treatment of the applicant. In addition, [REDACTED] failed to provide any specific and detailed testimony regarding the applicant's residence in this country despite claiming to have known the applicant since November 1981.

The applicant included a letter containing the letterhead of [REDACTED] Hair Design and Tanning Salon at [REDACTED] in Chicago, Illinois that is signed by [REDACTED] who listed her position as owner of this enterprise. Ms. [REDACTED] stated that the applicant had been a customer of this hair salon since April 1982. Nevertheless, [REDACTED] failed to provide any pertinent and verifiable information regarding the applicant's residence in the United States since April 1982. Furthermore, Ms. [REDACTED] failed to attest to the applicant's residence in this country since prior to January 1, 1982 up through April 1982.

The applicant provided an affidavit signed by [REDACTED] who declared that she was a good friend of the applicant since September 28, 1981 and that she knew her to be responsible, hardworking, and trustworthy. However, [REDACTED] failed to provide any additional testimony as to the circumstances under which she first met the applicant. Additionally, [REDACTED] failed to supply any specific and detailed information to confirm the applicant's claim of residence in the United States since prior to January 1, 1982.

The applicant submitted an affidavit that is co-signed by [REDACTED] and [REDACTED], respectively. The affiants noted that they had dealt with the applicant on a daily basis since getting to know her in 1982. Although both [REDACTED] and [REDACTED] testified that they had daily contact with the applicant since 1982, neither affiant provided any pertinent and verifiable testimony to substantiate the applicant's purported residence in the United States during the requisite period.

The applicant included an affidavit signed by [REDACTED] who stated that she employed the applicant as a live-in housekeeper from January 1982 to June 1982. Ms. [REDACTED] listed [REDACTED] in Chicago, Illinois as her address of residence during that period she employed the applicant. However, Ms. [REDACTED] failed to attest to the applicant's residence in this country both before January 1982 and after June 1982.

The applicant provided a declaration that is signed by [REDACTED]. Ms. [REDACTED] indicated that she was an employee at [REDACTED] Coin Laundry at [REDACTED] in Chicago, Illinois and the applicant had been a customer of this enterprise since October 1981. However, [REDACTED] failed to provide any detailed and specific information to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant submitted an affidavit signed by [REDACTED] who noted that she had known the applicant since 1981. Regardless, [REDACTED] failed to directly attest to the applicant's residence in this country from before January 1, 1982 through May 4, 1988.

The applicant included a letter containing the letterhead of [REDACTED] at [REDACTED] [REDACTED] in Chicago, Illinois declaration that is signed by [REDACTED] Mr. [REDACTED] stated that he had known the applicant since 1982 and she was a good customer of his jewelry business. However, [REDACTED] failed to provide any detailed and specific testimony regarding the applicant's residence in the United States since they first met in 1982. In addition, [REDACTED] did not attest to the applicant's residence in this country prior to that unspecified date he met the applicant in 1982.

The applicant provided four affidavits, two of which contain the letterhead of El Tipico Restaurant, that are all signed both signed by [REDACTED] Mr. [REDACTED] indicated that this restaurant had two separate locations, [REDACTED] in Chicago, Illinois and [REDACTED] in Skokie, Illinois, and he was owner-manager of these establishments as well as landlord of building located at [REDACTED]. Mr. [REDACTED] declared that he had employed the applicant as a cook in the restaurant at the [REDACTED] address since June 1982. [REDACTED] attested to the applicant's skill and knowledge in preparing authentic Mexican cuisine. Mr. [REDACTED] noted that the applicant resided in a second floor apartment above the restaurant since such date paying \$120.00 per month in rent with all utilities being in his name rather than the applicant's name. Mr. [REDACTED] asserted that the applicant had been absent from the United States from August 15, 1987 to September 10, 1987. Nevertheless, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up through June 1982.

The applicant submitted a letter that is signed by [REDACTED]. While [REDACTED] claimed that she had known the applicant since November 1981, she failed to provide any direct testimony relating to the applicant's residence in this country since before January 1, 1982 through May 4, 1988.

The applicant included an affidavit signed by [REDACTED] who testified that the applicant had been absent from the United States from August 15, 1987 to September 10, 1987. However, [REDACTED]' testimony did not supply any specific and detailed information to confirm the applicant's claim of residence in this country since prior to January 1, 1982 as it related solely to the applicant's purported absence from the United States in 1987.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-687 application on June 25, 2003. Although the director misstated the dates of the requisite period by indicating that the applicant had failed to establish residence in this country prior to January 1, 1981 in the notice of denial, this error appears to be nothing more than a typo as the director utilized the actual dates of requisite period, prior to January 1, 1982 to May 4, 1988, in determining the applicant's eligibility under the provisions of the LIFE Act.

On appeal, counsel submits a new letter signed by [REDACTED], the same individual who had previously submitted a letter in support of the applicant's claim of residence in this country for the requisite period. [REDACTED] reiterates his prior testimony that he had known the applicant since 1982 and she was a good customer of his jewelry business in Chicago, Illinois. [REDACTED] adds that he and the applicant had become good friends and continued to maintain contact after she had moved to Wisconsin. Nevertheless, [REDACTED] once again fails to provide any relevant and verifiable testimony to corroborate the applicant's claim residence in the United States for the requisite period. Furthermore, [REDACTED] did not attest to the applicant's residence in this country prior to that unspecified date he met the applicant in 1982.

Counsel includes a typewritten letter that is signed by [REDACTED], the same individual who previously submitted a letter in support of the applicant's claim of residence in the United States since prior to January 1, 1982. [REDACTED] states that he was the applicant's eye doctor from November 1981 through 2000 when she moved to Wisconsin. [REDACTED] notes that he and the applicant maintained contact by telephone and that she had even returned to Chicago, Illinois on two occasions for eye examinations. However, the letter contains a handwritten notation reflecting [REDACTED] began treating the applicant in June 1990 rather than November 1981. Neither the applicant nor [REDACTED] provide any explanation for the revised testimony contained in the handwritten notation. Additionally, the probative value of [REDACTED]'s testimony is further limited by the fact that it is not accompanied by any corresponding medical or business records reflecting his treatment of the applicant. Moreover, [REDACTED] fails to provide any specific and detailed testimony regarding the applicant's residence in this country for the period in question.

Counsel reiterates the applicant's claim of residence in this country for the requisite period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate her residence in this country the period in question. Counsel objects to the director's treatment and analysis of documentation submitted in response to the notice of intent to deny. However, as discussed above, the supporting documentation contained in the record including documents submitted in response to the notice of intent to deny do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, two documents in the record, the affidavit signed by [REDACTED] included with the Form I-687 application and the second letter from [REDACTED] submitted on appeal, both contain contradictory information relating to critical elements of the applicant's claimed residence in this country since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation and the conflicting nature of portions of testimony contained in such supporting documents seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as

required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.