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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-286-10954

Office: LOS ANGELES

Date: **OCT 30 2006**

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. 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 if your case was 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. 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 denied the application, finding 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.

On appeal, the applicant executes a signed statement under penalty of perjury stating that she has been living in the United States since 1981, but other than her own statement cannot offer other independent and objective evidence to show continuous residence for the requisite period.¹

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and maintain 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 continuous physical presence 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).

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.

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. To meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The inference to be drawn from the evidence provided shall

¹ Her statement states that she had no social security number and would only get paid and paid all her bills in cash during the requisite period, thus cannot submit other evidence *i.e.* Social Security Administration report, IRS printout, and other corroborating evidence.

depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

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 here is whether the applicant has met her burden of establishing her continuous and physical residence for the requisite period by a preponderance of the evidence. In an attempt to establish continuous unlawful residence since before January 1, 1982 until the date of filing the application, the applicant provided a declaration from the following people: [REDACTED] and [REDACTED], and [REDACTED].

All of the declarants provided a photocopy of their photo IDs along with other evidence such as tax records, utility bills, and insurance policy to show that they were living in the United States in 1981. All of them stated that they had known the applicant since 1981. Additionally, all of them but [REDACTED] said that they knew the applicant while they were attending a prayer group at Parish Saint Elizabeth in Van Nuys, California. [REDACTED] declared that she met the applicant when she was visiting a mutual friend. The Los Angeles District Director noted in the decision that these declarations’ authors only state that they had known the applicant to be in the United States since 1981. None of the declarants stated with any specificity where and under what circumstances they first met her, how they keep in contact all through these times since 1981 and the frequency of their contact with her, as well as an address or addresses where the applicant resided in the United States during the requisite period. The declarants’ brief references to have known the applicant since 1981 through the same prayer group attendance and a mutual friend at some unidentified date in 1981 are not persuasive. The lack of detail regarding the events and circumstances of the applicant’s long friendship is significant given each declarant’s claim to have known the applicant for over 20 years. Thus for this reason, the declarations from the applicant’s friends are deemed to have very

little probative value as evidence of her continuous residence in the United States since before January 1, 1982.

Along with the declarations from friends, the applicant also submitted the following:

- An affidavit notarized March 1, 1991 from [REDACTED], who asserted that she employed the applicant as a housekeeper and babysitter from May 1981 to April 1985, and that the applicant resided with [REDACTED], the affiant, at [REDACTED] during the same period. The applicant was paid \$50.00 per week plus room and board. To show that [REDACTED] resided at the said address in 1981, she submitted a photocopy of her 1981 California ID and tax return. However, the applicant's Form I-687 lists no employment with [REDACTED]
- An affidavit notarized March 13, 1991 from [REDACTED] who indicated that she has known the applicant since 1986 and stated that she and the applicant lived in the same address at [REDACTED] from April 1985 to December 1987.
- Statement of earnings and deductions for the pay periods ending September 13 and 27, 1987, October 25, 1987, and November 8, 1987, which show applicant's social security number and the total amount of earnings and payment of taxes to date . The presented evidence seriously conflict with the applicant's own sworn statement that declares she only received cash during the requisite period of continuous residence. Furthermore, the applicant's Form I-687 reveals that she has been self-employed since 1981.
- Several statements from Los Angeles Mission College Financial Aid Office issued in 1983, 1984, and 1985 as well as satisfactory progress report issued in 1985, bearing the applicant's name, social security number, and notes from the school indicating her expected date of completion and what courses she needed to take to satisfy the general education requirements. The presented evidence here also seriously conflict with the applicant's Form I-687 and sworn statement which state she was self-employed since 1981 and that she had no social security number during the requisite period.

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). Additionally, the regulations specifically state that an applicant must provide evidence of eligibility apart from his/her own testimony to meet his/her burden of proof. 8 C.F.R. § 245a.2(d)(6). Here, the applicant, by her own sworn statement, says that she cannot offer any evidence to resolve any of the inconsistencies. The director, in her Notice of Intent to Deny dated August 1, 2006, advised the applicant to submit, among other things, a statement from Social Security Administration, IRS printout from 1981 to 1988, and other corroborating evidence to show that she resided in the United States since before January 1, 1982. In response, the applicant asserted that except for the declarations issued by her

friends, she had no further evidence to establish her presence in the United States during the requisite period in question.

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 contradiction 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.