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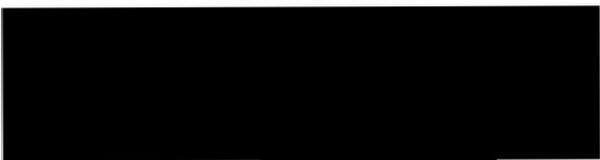
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-101-26362

Office: LOS ANGELES

Date: **SEP 16 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:

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 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 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. 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, the applicant asserts that she has resided in the United States since 1979. The applicant resubmits her previously filed documentation and an affidavit from her cousin, Maria Tinajero Lopez.

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).

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. 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 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 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 Supplement to Citizenship and Immigration Services on January 9, 2006. 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 showed that during the requisite period she resided at [REDACTED] Pacoima, California from 1980 until 1985; [REDACTED] San Fernando, California from 1985 until 1986; and [REDACTED] Pacoima, California from 1987 until 1992. At part #33, where applicants are asked to list their employment in the United States since entry, the applicant showed that from 1979 until 1999 she was unemployed and supported by her husband.

The applicant submitted the following documentation:

- A copy of her California Driver License, issued June 27, 1986. This license corroborates the applicant’s claim that she resided at [REDACTED], San Fernando, California in 1986. This document is probative evidence of the applicant’s residence in the United States in June 1986.

- A copy of her California Identification Card, issued December 17, 1981. This identification card corroborates the applicant's claim that she resided at [REDACTED] Pacoima, California in 1981. This document is evidence of the applicant's residence in the United States prior to January 1, 1982.
- A copy of a California birth certificate for the applicant's son, [REDACTED]. This birth certificate shows that the applicant gave birth to [REDACTED] on December 30, 1982 at Pacoima Memorial Hospital in Lakeview Terrace, California. The applicant obtained a certified copy of this birth certificate from the registrar-recorder of Los Angeles County, California on March 4, 1983. The applicant also submitted a hospital record issued for [REDACTED]' showing his date of birth as December 30, 1982. These documents are probative evidence of the applicant's residence in the United States from December 30, 1982 until March 4, 1983.
- A copy of a medical record showing that the applicant attended the Pacoima Health Clinic for prenatal care on December 23, 1987; January 7, 1988; March 10, 1988; April 7, 1988; May 5, 1988; June 2, 1988; and February 4, 1988. The applicant also submitted a copy of a California birth certificate for the applicant's son, [REDACTED]. This birth certificate shows that the applicant gave birth to [REDACTED] on July 28, 1988 at Olive View Medical Center in Sylmar, California on July 28, 1988. Therefore, it can be reasonably presumed that the applicant's prenatal visits were related to her pregnancy with her second child, [REDACTED]. These documents are probative evidence of the applicant's residence in the United States from December 23, 1987 until the end of the requisite period.
- A copy of a California Immunization Record on behalf of the applicant's son, [REDACTED]. This record shows that during the requisite period [REDACTED] received the following vaccinations: the Polio vaccination on February 24, 1983; April 26, 1983; and March 11, 1988; the Diphtheria, Tetanus, Pertussis vaccination on February 24, 1983; April 28, 1983; and March 11, 1988; and the Measles, Mumps and Rubella vaccination on March 11, 1988. The record also shows that [REDACTED] received a TB skin test on March 11, 1988. When viewed within the totality of the above evidence, this record corroborates the applicant's claim of residence in the United States from February 1983 until April 1983 and in March 1988.

The applicant was interviewed for temporary resident status on October 13, 2006. During the interview, the adjudication officer issued to the applicant a Form I-72, request for evidence. The adjudication officer requested the applicant to provide proof of her continuous presence in the United States from 1982 until 1988. The Form I-72 indicates that such proof may include doctors' letters and children's records if she is identified as the responsible parent or party. The form also states that if the applicant furnishes affidavits, the affiants must provide proof that they were physically present in the United States and that they were in contact with the applicant.

In response to the Form I-72, the applicant submitted the following documentation:

- A copy of a Pacoima Memorial Hospital discharge instruction sheet addressed to the applicant. The applicant submitted a poor copy of this sheet rendering the date of discharge illegible. However, the bottom corner of this sheet shows the applicant's name and the date December 29, 1982. This date is likely the date the applicant was admitted to the hospital since she submitted evidence that she gave birth to her son, [REDACTED], at the Pacoima Memorial Hospital on December 30, 1982. Therefore, this document is additional probative evidence of the applicant's residence in the United States in December 1982.
- A copy of a patient identification card issued to the applicant from the Olive View Medical Center. The exact year of the issue date on this card is difficult to decipher because it is not clearly written. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A clinic log showing the following dates: October 14, 1982, November 4, 1982, November 18, 1982, December 2, 1982, December 9, 1982, December 16, 1982, December 23, 1982 and December 30, 1982. However, this log does not bear the name or location of the clinic nor does it show the applicant's name. There is no information on this document to link it to the applicant. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A form letter from Pacoima Memorial Hospital addressed to the applicant, dated December 31, 1982. This letter is written in Spanish without an accompanying English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A front and back copy of a WIC (Women, Infants and Children) identification card. The card shows that it was issued to the applicant by the California WIC program in Pacoima, California on May 10, 1988. This document is probative evidence of the applicant's residence in the United States near the end of the requisite period.
- A declaration from [REDACTED] dated November 4, 2006, which provides in pertinent part:

. . . I declare that I have known [REDACTED] for many years. I remember that I met her in 1980 when [REDACTED] was introduce [sic] to me by my wife [REDACTED] at that time she was living in Van Nuys. We have been good [sic] good friend [sic] my wife and I baptized her son [REDACTED] in 1988. We kept in touch since 1980 and we get together for Holidays and parties. . . .

This declaration fails to establish the extent of [REDACTED]'s contact with the applicant in the United States during the requisite period. The declaration provides, "[w]e kept in touch since 1980 and we get together for holidays and parties." However, it does not convey how frequently [REDACTED] and the applicant were in contact during the requisite period. Nor does it illustrate in detail the type of contact they maintained in the United States. Given these deficiencies, this declaration is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A declaration from [REDACTED], dated November 4, 2006, which provides in pertinent part:

. . . I declare that I have known [REDACTED] for many years. I remember that I met her in 1980 when [REDACTED] and her husband were living in Van Nuys. I met her through her ex-husband [REDACTED] who was a mechanic and would help me out with my car. I have had a business called [REDACTED] since the 1980's on San Fernando Road in the city of Pacoima. They would go to eat to [sic] my restaurant often. We kept in touch ever since and we have been good friends. . . .

This declaration fails to establish the extent of [REDACTED] contact with the applicant in the United States during the requisite period. The declaration fails to provide the exact year that [REDACTED] restaurant opened for business. It also fails to provide the time period or years that the applicant frequented his restaurant. Given this lack of detail, the declaration is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A declaration from the applicant, dated December 30, 2005, stating that she has been residing in the United States in an unlawful status since 1979. The applicant asserts that she attempted to apply for legalization with the former Immigration and Naturalization Service during the original legalization application period, but was told she did not qualify because of her travel to Mexico.

On December 14, 2006, the director denied the application for temporary resident status. In denying the application, the director found that the applicant's documentation shows activity in the United States only during 1981, 1982 and 1988. The director found that the probative value of the statements from [REDACTED] and [REDACTED] is nullified by the lack of corroboration. The director determined that the applicant failed to establish her residence in the United States from 1983 until 1987. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, the applicant asserts that she has resided in the United States since 1979. The applicant resubmits her previously filed documentation and an affidavit from her cousin, [REDACTED]

The affidavit from [REDACTED] dated January 2, 2007, provides, "I [REDACTED] am a witness that my cousin [REDACTED] lived at [REDACTED] Pacoima, California 91331. I visited her on December 23, 1984 for Christmas and New Years. I went back home on January 2, 1985 and ever since then we have kept in touch. Of course in [sic] that time I was living in Dallas, Texas . . ." This affidavit constitutes some evidence that the applicant resided in the United States during December 1984 and January 1985.

In summary, the applicant has provided probative evidence of her residence in the United States prior to January 1, 1982 until April 1983, December 1984, January 1985, and December 1987 until the end of the requisite period. However, she has failed to provide probative evidence of her residence in the United States from April 1983 until December 1987 except for a one-month period. The applicant submitted declarations from [REDACTED] and [REDACTED] as evidence of her residence in the United States throughout the requisite period. As noted above, these statements lack considerable detail on the authors' relationship with the applicant during the requisite period. Hence, they are of little probative value as corroborating evidence. In addition, the affidavit from [REDACTED] merely confirms one month of the applicant's residence in the United States. Although the applicant has provided proof of her residence in the United States prior to January 1, 1982 until April 1983, December 1984, January 1985, and December 1987 until the end of the requisite period, such proof does not cover the entire requisite period. Therefore, the applicant has failed to establish that she continuously resided in the United States during the entire requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire 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 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.