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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-06-089-11275

Office: SAN DIEGO

Date: **SEP 22 2008**

IN RE: Applicant: [REDACTED]

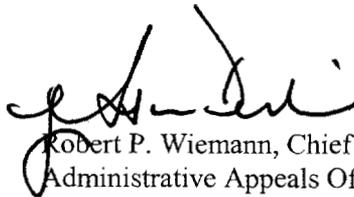
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, San Diego. 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 the documents she submitted are true and can be verified.

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 (CIS) on December 28, 2005. 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 her first two residences in the United States as [REDACTED] California. The applicant testified that she resided at [REDACTED] from 1981 until 1984 and Juper Drive from 1984 until 1988. The adjudication officer accordingly amended her application to reflect this testimony. At part #33, where applicants are asked to list their employment history in the United States, the applicant responded “Self Employed” without any other specific information. The applicant’s failure to complete this part of the application draws into question the credibility of her claim of residence in the United States during the requisite period.

On January 31, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to 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. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of

contemporaneous documentation that may be furnished 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. The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant furnished seven fill-in-the blank forms entitled "CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarations." The instructions on the forms request the applicant to "Fill in information below about the person who will sign the declaration for the applicant." The applicant furnished completed forms on behalf of [REDACTED]

[REDACTED] However, these individuals have not signed their respective forms. Therefore, these documents are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The applicant was interviewed for temporary resident status on October 31, 2006. On November 1, 2006, the director issued a Form I-72, Request for Evidence, to the applicant. The form requests the applicant to provide: documents that indicate she was continuously physically present in the United States for before January 1, 1982 until May 4, 1988 or the date she attempted to file a legalization application; a Form I-693, Medical Examination, and Form I-693 Supplement, Documentation of Immunization; a Form I-134, Affidavit of Support; and a declaration of her residence and employment in the United States.

In response to the request for evidence, the applicant furnished her Form I-693, Form I-693 Supplement, Form I-134, and the following documentation of her residence in the United States:

- A letter from [REDACTED] dated November 13, 2006, which provides:

I met [REDACTED] on 1984 in San Diego, CA through her brother at a birthday party [sic] At that time she was living in Bell Garden, CA. During 1984-1988 I saw her on various occasions, sometimes at her brother in law [sic] house in National City, CA. or at family reunions in Bell Garden, CA. Since I meet [sic] her we became I [sic] good friends and we have always been in contact.

This letter fails to detail the frequency of [REDACTED] contact with the applicant during the period of 1984 through 1988. This information is necessary to establish [REDACTED] direct personal knowledge of the applicant's continuous residence in the United States during

the requisite period. Given this deficiency, this letter is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED], which provides:

I met [REDACTED] in 1981, at her uncle's house [sic] we were celebrating Christmas in Bell Gardens, California. Since we were neighbors I would see her almost every day, then on or about 1984 she moved out to San Diego, California, to her brother's house. I would still see her at a [sic] family reunions, birthdays, holidays, thanksgiving etc.

This letter also fails to detail the frequency of [REDACTED] contact with the applicant during the requisite period. This information is necessary to establish [REDACTED] direct personal knowledge of the applicant's continuous residence in the United States during the requisite period. Given this deficiency, this letter is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A notarized letter from [REDACTED] dated November 24, 2006. This letter provides:

[REDACTED] lived with me in my home at [REDACTED] from 1981-1984 [sic] when [REDACTED] was living with me she worked cleaning the house, child caring and cooking in my house and with my neighbors she worked too.

This letter fails to establish how [REDACTED] first became acquainted with the applicant. In addition, the statement fails to detail their relationship from 1981 until 1984. There is no mention of their living arrangement/agreement during this period. Furthermore, the statement indicates that the applicant was cleaning homes, cooking and providing child care for [REDACTED] and her neighbors. However, the applicant failed to list this employment on her Form I-687. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from the applicant indicating that during the requisite period she resided at [REDACTED] from 1981 until 1984 and Juper Drive, #C, San Diego, California from 1984 until 1988. The letter provides, "From 1981 until 1984 I worked with my aunt, in [REDACTED] During those years I also worked as a babysitter, cleaning houses in the same area in Bell Garden, CA [sic] From 1984 until 1988. [sic] working cleaning houses, baby sitter in the San Diego, Area . . ." The director's Form I-72, Request for Evidence, specifically requests the applicant to provide her employment addresses. However, the applicant failed to comply with this part of the director's request.

On January 23, 2007, the director issued a denial notice to the applicant. In denying the application the director determined that the applicant failed to submit any legitimate and viable documentation of her residence in the United States during the requisite period.

On appeal, the applicant asserts that the letters she submitted are true and can be verified. The applicant states, "Each letter contains; complete name, current address and copy of the affiant proper Identification." The applicant submitted phone numbers for [REDACTED] the documentation she filed in response to the Form I-72.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant initially submitted as evidence of her residence in the United States during the requisite period, seven fill-in-the blank forms entitled, "CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarations." However, the forms do not bear the signatures of their purported authors. As such, they are without any probative value as corroborating evidence. In response to the director's request for evidence, the applicant submitted three letters attesting to her residence in the United States during the requisite period. Two of the letters are of little probative value because they lack detail on the frequency of the authors' contact with the applicant during the requisite period. The third letter is without any probative value because it fails to establish how the author first became acquainted with the applicant and their relationship during the requisite period. Finally, the applicant failed to fully comply with the director's request for a list of her employment addresses in the United States. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The applicant's evidence in totality is at best of minimal probative value. Therefore, the applicant has not furnished sufficient evidence to meet her burden of proof in this proceeding.

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.