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**U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED]  
MSC-05-271-14083

Office: ATLANTA

Date: **SEP 24 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:

[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.

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, Atlanta. 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. It is noted that the director raised the issue of class membership in her decision. Since the director considered the Form I-687 application on the merits, she is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant provides a statement detailing the applicant's period of claimed residence in the United States during the requisite period. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, counsel's statements regarding the applicant's residence in the United States do not constitute evidence in this context. Counsel also notes the difficulty in obtaining evidence of residence for an applicant who is a minor and undocumented. Counsel states that the applicant's sworn affidavits, together with affidavits signed by other individuals, should be sufficient to meet her burden of proof. The applicant also submits an additional affidavit on appeal.

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 June 28, 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 multiple addresses during the requisite period. The applicant indicated that she did not remember her address but had lived in Detroit, Michigan from August 1981 to April 1982. She also listed the addresses [REDACTED], Bronx, New York from April

1982 to May 1986; and [REDACTED] from June 1986 to October 1991. It is noted that the record appears to indicate that the applicant failed to submit several sections of the Form I-687 application, including parts that ask applicants to list employment and memberships with organizations in the United States. The applicant's failure to provide this information detracts somewhat from her claim of continuous residence in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country throughout the requisite period, the applicant initially provided two affidavits. The affidavit from [REDACTED] states that the applicant's mother was a friend of the affiant's sister. The affiant stated that she received a telephone call "on New Year's Eve" from her sister in Ghana. The affiant stated that she spoke to a friend of her family whose daughter lived with friends in the Bronx, New York. The affiant identified the daughter living in New York by the applicant's name. The affiant failed to specify the date or the year when this telephone conversation occurred. The affiant stated that she first met the applicant in the Bronx at an outdoor ceremony in 1984, when the applicant was 14 or 15 years old. The affiant also stated that, in 1986, she arranged for the applicant to move to Denver to baby-sit for a friend. The affiant stated that the applicant left New York on May 30, 1986 and arrived in Denver on June 5, 1986. The applicant babysat and learned to braid hair. The affiant stated that the applicant stayed in Denver "for some years." This affidavit asserts that the affiant has first-hand knowledge of the applicant's residence in the United States sometime in 1984 and from May 30, 1986 to at least May 1988. The affiant failed to provide detail regarding the date when the applicant first moved to the United States and whether she continuously resided in the United States between 1984 and 1986. Therefore, this affidavit merely constitutes some evidence of the applicant's residence in the United States during 1984 and from May 1986 until the end of the requisite period.

The applicant also provided an affidavit from [REDACTED], in which the affiant stated that he stopped in New York in February 1985 and stayed for one month. He stated that, during that time, he met the applicant. At that time, the applicant was about 15. The affiant stated that he was told that the applicant was assisting his friends in their cleaning business and learning how to braid hair as a vocation. The affiant stated that the applicant had lived with an uncle and his wife in Detroit, but had to relocate after the uncle died because the aunt decided to go back "home" for good. This affidavit asserts that the affiant has first-hand knowledge of the applicant's residence in the United States in February 1985. The affiant indicated that he has indirect knowledge that the applicant resided in Detroit before she lived in New York. However, the affiant provided no detail regarding the dates when the applicant moved to Detroit or to New York. Therefore, this affidavit merely constitutes some evidence of the applicant's residence in the United States in February 1985.

On November 13, 2006, the director issued a Notice of Intent to Deny (NOID), finding that the applicant had failed to meet the requirements of temporary resident status. Specifically, the director stated that the affidavits provided by the applicant were very general in nature and substance and failed to state the times or locations where the applicant lived during the requisite period.

In response to the NOID, the applicant submitted two additional affidavits. The affidavit from Akua Serwaa states that the affiant met the applicant at a funeral in Detroit between February 12 and February 14, 1982. The funeral was for the husband of the affiant's friend, who was also the applicant's uncle. After the applicant's aunt requested that she do so, the affiant let the applicant come to New York to stay with her. The applicant lived with the affiant in New York from April 20, 1982 until 1986, when the applicant relocated to Denver. The affiant also indicated that the applicant came to New York in 1987 but failed to specifically state that the applicant continued to reside in the United States at that time. This affidavit constitutes some evidence that the applicant resided in the United States from February 12, 1982 until an unspecified date in 1986.

The affidavit from [REDACTED] dated December 4, 2006, states that the affiant met the applicant at the applicant's uncle's funeral on February 12, 1982. The affiant stated that she picked the applicant up at the train station in New York on April 20, 1982. The affiant stated that the applicant stayed with [REDACTED] and assisted with her cleaning business and hair braiding business. The affiant stated that the applicant left New York in 1986 for Denver. However, the affiant failed to indicate whether she had personal knowledge of the applicant's residence in New York after April 1982 or the applicant's residence in Denver. The affidavit also lacks detail regarding the nature and frequency of the affiant's contact with the applicant after April 20, 1982. As a result of these deficiencies, this affidavit merely constitutes some evidence that the applicant resided in the United States from February 12, 1982 through April 20, 1982.

In denying the application on February 2, 2007, the director concluded 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, counsel for the applicant provides a statement detailing the applicant's period of claimed residence in the United States during the requisite period. As explained above, counsel's statements regarding the applicant's residence in the United States do not constitute evidence in this context. Counsel also notes the difficulty in obtaining evidence of residence for an applicant who is a minor and undocumented. Counsel states that the applicant's sworn affidavits, together with affidavits signed by other individuals, should be sufficient to meet her burden of proof. The applicant also submits an additional affidavit on appeal.

The second affidavit from [REDACTED], dated February 27, 2007, describes the affiant's awareness of attempts that have been made by others to apply for temporary resident status on behalf of the applicant. This affidavit will be given no weight in determining whether the applicant has established that she resided continuously in the United States in an unlawful status throughout the requisite period.

In summary, the applicant has provided a series of affidavits, each of which supports her claim of residence for a portion of the requisite period. The first affidavit from [REDACTED] supports the applicant's claim to have resided in the United States from February 12, 1982 through April 20, 1982. The affidavit from [REDACTED] supports the claim that the applicant resided in the

United States from February 12, 1982 until sometime in 1986. The affidavit from [REDACTED] supports the claim that the applicant resided in the United States sometime during 1984 and from May 1986 until the end of the requisite period. The affidavit from [REDACTED] supports the applicant's claim of residence in the United States during February 1985. The applicant provided no evidence to support her claim that she entered the United States before January 1, 1982 and that she resided in the United States continuously from before January 1, 1982 until February 12, 1982. The applicant provided single affidavits to support her claim of residence during the periods between April 1982 and 1984, January 1985 and May 1986, and from 1987 through the end of the requisite period.

The absence of sufficient, adequately detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 fact that the applicant failed to provide any evidence of her residence from before January 1, 1982 until February 12, 1982 and significant portions of her residence during the requisite period are only supported by a single affidavit, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.