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FILE: [REDACTED]
MSC 05 045 11382

Office: LOS ANGELES

Date: SEP 25 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, Los Angeles. The matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, counsel asserted that the director failed to issue a notice of intent to deny as required by the CSS/Newman Settlement Agreements.

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 Immigration and Nationality Act (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)(1).

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)(1) 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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 applicant 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 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.

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.

On the Form I-687 application, which the applicant signed on October 29, 2004, the applicant was required to provide an exhaustive list of her residences in the United States since her first entry. As part of that residential history, the applicant stated that, (1) from October 1981 to May 1984 she lived at [REDACTED], California, (2) from June 1984 to January 1987, she lived at [REDACTED] (3) from January 1987 to May 1988 she lived at [REDACTED], and (4) from May 1988 to March 1989 she lived at [REDACTED]

The applicant was also required to provide an exhaustive list of all of her employment in the United States since January 1, 1982. As part of that employment history, the applicant stated (1) that she worked as a janitor from October 1981 to June 1983 for "Advertising Distributor" (2) that she worked from August 1985 to June 1988 as a janitor for [REDACTED], and (3) that she worked from August 1985 to August 1997 in housekeeping at the [REDACTED]

California. The applicant did not provide addresses and phone numbers for “Advertising Distributor” or Beverly Pavilion. The applicant did not state where or whether she was employed from July 1983 to August 1985. This office notes that the applicant’s claims of employment for and [REDACTED] overlap.

The applicant was required, on that application, to provide an exhaustive list of her absences from the United States since January 1, 1982. The applicant stated she had traveled to Mexico from July 1983 to August 1983, and from September 1987 to October 1987.

The pertinent evidence in the record is described below.

- The record contains an undated form declaration from [REDACTED] of Los Angeles, California. [REDACTED] stated that from October 1981 through May 1984 she and the applicant lived together at [REDACTED] California.
- The record contains a declaration, dated October 29, 2004, from [REDACTED] of Los Angeles, California. [REDACTED] stated that he met the applicant during December 1981 at a friend’s house, but did not state where that house was. The declarant stated that he knows that the applicant entered the United States illegally through San Ysidro, California. The declarant stated that he knows that the applicant continued to live in the United States because he saw her at family gatherings.
- The record contains an almost identical declaration, also dated October 29, 2004, from [REDACTED] of the same address as [REDACTED]. That declaration states that the declarant met the applicant during December 1981 at a friend’s reunion, but does not state whether that meeting took place in the United States. The declaration further states that the declarant knows that the applicant entered the United States illegally through San Ysidro, and that the declarant knows that the applicant continued to live in the United States because the declarant saw the applicant at family gatherings.
- The record contains a declaration, dated October 4, 2004, from [REDACTED] of San [REDACTED] Mexico. [REDACTED] stated that he was born in Mexico, that he lived in Mexico from January 1982 to May 1988, and that, as of the date of that declaration, he continued to live in Mexico. [REDACTED] stated that he has known the applicant for many years and that he knows that she entered the United States illegally through San Ysidro, but without stating when that occurred. As his basis for his knowledge of the applicant’s residence in the United States the declarant added, “I know that [the applicant] was residing in the United States in October 1987 because I saw her prior to [her] moving to the United States.”
- The record contains a declaration, dated October 23, 2004, from [REDACTED] of San Miguel, Jalisco, Mexico. [REDACTED] stated that she was born in Mexico, lived in Mexico from January 1982 to May 1988, and continued to live in Mexico on the date of that declaration. [REDACTED] stated that she knows that the applicant entered the United States

illegally through San Ysidro, California. She further stated, "I know that [the applicant] was residing in the United States in October 1987 because she came to visit me prior to moving to the United States."

- The record contains a declaration, dated October 11, 2007, from [REDACTED] of Guadalajara, Jalisco, Mexico. [REDACTED] stated that she was born in Mexico, lived in Mexico from January 1982 to May 1988, and continued to live in Mexico on the date of that declaration. [REDACTED] stated that she knows that the applicant entered the United States illegally through San Ysidro, California. She further stated, "I know that [the applicant] was residing in the United States in October 1987 because her family kept me informed of her move to the United States and how she is currently doing."

Although the headings on the declarations from [REDACTED] state that they are affidavits, this office notes that they contain no indication that the declarants swore to the declarations before a notary or any other official authorized to administer oaths. As a result, they do not qualify as affidavits and will not be accorded the additional evidentiary value accorded to affidavits and other sworn statements.

Further, although the affidavits of [REDACTED] and [REDACTED] state that the applicant entered the United States illegally through San Ysidro, they do not state when that occurred or their basis for that asserted knowledge; that is, how they know that asserted fact.

- The record contains a declaration, dated June 5, 2001, from the applicant herself. The applicant stated, "The second time I left the United States was in **about** 1987 [Emphasis supplied.], and "Since my return in October 1987, I have not departed."

The applicant's own declaration is relatively precise as to her return to the United States, stating that it occurred during October 1987. The applicant has left the date that she left the United States for that visit to Mexico much more vague, stating that it was approximately 1987. That the applicant cannot unequivocally state that she left the United States during 1987 suggests that the applicant may have been absent for more than 45 days prior to her return to the United States during October 1987.

- The record contains a form affidavit, dated August 12, 1989, from [REDACTED] of Los Angeles, California. [REDACTED] stated that she knows that the applicant has lived in Los Angeles since January 1983 because she met the applicant in Los Angeles then and has been in touch since.
- The record contains a form affidavit, dated August 12, 1989, from [REDACTED] of Huntington Park, California. [REDACTED] stated that he knows that the applicant has resided in Los Angeles since January 1983 because he met the applicant in Los Angeles then and they have been friends ever since.

- The record contains a second form affidavit, dated September 18, 1998, from [REDACTED] of Long Beach, California. [REDACTED] stated that he knows that the applicant has resided in Los Angeles since January 1983 because she is his sister-in-law and he has had frequent contacts with her since January 1983.
- The record contains the applicant's 1982, 1983, 1984, 1985, 1986, 1987, and 1988 U.S. personal income tax returns. The 1982, 1983, 1984, 1986 and 1987 returns show that the applicant lived at [REDACTED]. The 1985 return shows that the applicant lived at [REDACTED]. The 1988 return shows that the applicant lived at [REDACTED]. This office notes that the applicant did not claim, on the Form I-687 application, to have lived at any of those addresses. Further, those tax returns contain no indication that they were ever filed with the IRS.
- The record contains what appear to be partially legible photocopies of 1988 Form W-2 Wage and Tax Statements issued to the applicant by Beverly Pavilion Hotel and Beverly Rodeo Hotel. Both of those W-2 forms appear to show that the applicant lived at [REDACTED] in Los Angeles, California. This office notes that, on the ostensibly exhaustive list of the applicant's U.S. residences on the instant Form I-687 application, the applicant did not claim ever to have lived at that address. Further, that address does not match the address the applicant gave on either her 1987 or 1988 tax return.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The record contains a handwritten note, dated January 5, 1989, on photocopied letterhead of CBS Advertising Distributors in Beverly Hills, California. That letter states that the applicant "worked for the [REDACTED] Family for Domestic Services since August 1981 to June 1983." [Errors in the original.] The signature on that note is illegible, but the last name shown may be Ross.
- The record contains a letter, dated January 5, 1989, from [REDACTED] Director of Personnel at Beverly Pavilion, a hotel in Beverly Hills, California. That letter stated that the applicant worked as a maid at that hotel from August 21, 1985 through June 9, 1985, and continued to work for the Beverly Rodeo Hotel, a related company. Pay stubs provided show that the applicant worked for the Beverly Rodeo Hotel during 1988. Those pay stubs show a hire date of August 21, 1985.
- The record contains a letter, dated November 12, 1997, from [REDACTED] Human Resources Director for Summit Hotel Rodeo Drive. That letter states, "This is to verify that

[the applicant] was employed by the Summit Hotel Rodeo Drive from August 21, 1985 to August 7, 1997, in the capacity of Room Attendant.

None of those three employment verification letters states the applicant's address during her employment or whether the applicant was ever laid off. They do not state whether the information provided was taken from company records, and whether those records are available for inspection, or, in the alternative, why they are unavailable. Those employment verification letters will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). Because they do not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i), however, they will not be accorded as much evidentiary weight as they would have been accorded had they complied with the governing regulation.

- The record contains what appears to be a pay statement issued to the applicant on October 6, 1985. The company that issued that pay statement is not identified.
- The record contains blank check stubs from the Beverly Pavilion and Beverly Rodeo Hotel dated September 18, 1985 and December 30, 1985, respectively. Although the applicant's name is handwritten on those check stubs, they do not show any hours worked, earnings, deductions, etc. Whether those check stubs demonstrate that the applicant worked for those companies on the dates shown is unclear. Why Beverly Pavilion would have issued a check stub to the applicant on September 18, 1985 when the letter from its personnel director states that she ceased to work there on June 9, 1985 is also unclear.
- The record contains other check stubs issued to the applicant by Beverly Pavilion and Beverly Rodeo Hotel. The year during which those stubs were issued is not indicated.
- The record contains an identification card issued to the applicant by Fremont Community Adult School in Los Angeles, California. The expiration date on that card is June 30, 1985.
- The record contains a Form I-589 Application for Asylum or Withholding of Deportation that the applicant signed and submitted to CIS on August 7, 1997. At Part C of that form the applicant stated, "I arrived to the united states in (1982)." [Errors in the original.] At item 14 of that application the applicant stated that she had last entered the United States on August 15, 1982. At her August 7, 1997 interview pertinent to that application, the applicant amended that date to August 15, 1983.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In the Notice of Decision, dated July 26, 2006, the director denied the application. In addition to noting that the applicant's declarations were not notarized, the director observed that, on her Form I-589 Application for Asylum or Withholding of Deportation that the applicant submitted to CIS, she stated that she entered the United States on August 15, 1982.

Counsel's chief argument on appeal was procedural. Counsel argued that CIS was obliged, pursuant to the settlement agreement in CSS/Newman Settlement Agreements, to issue a notice of intent to deny and provide the applicant an opportunity to respond before denying the instant application.

Preliminarily, this office will address counsel's procedural argument. The CSS/Newman Settlement Agreements require that, before denying an application based on failure to demonstrate CSS/Newman Class Membership CIS must issue a notice of intent to deny. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. The instant case was not denied for failure to demonstrate class membership, and, in the instant case, the CSS/Newman Settlement Agreement imposes no notice of intent to deny requirement.

This office will also address the substantive aspects of this case. The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The declaration of [REDACTED] states that the applicant lived with her prior to January 1, 1982. The employment verification letter from CBS Advertising Distributors states that the applicant worked for that company prior to January 1, 1982.

As was noted above, pursuant to *Matter of Ho*, 19 I&N Dec. 582, 591-92, all of the applicant's assertions and evidence are impeached somewhat by the conflict between the applicant's claimed residential history, related on the Form I-687, and the addresses shown on her evidence.

None of the remaining declarations explicitly state that the declarant personally encountered the applicant in the United States prior to January 1, 1982. The declarations of [REDACTED] state that they encountered the applicant prior to that date, but do not specify that the meeting took place in the United States. The declarations of [REDACTED] do not indicate that the declarants actually saw the applicant in the United States, as they admit that they were never in the United States. [REDACTED] and [REDACTED], the applicant's brother-in-law, all state that they met the applicant in the United States during January of 1983.

None of the contemporaneous evidence in the record indicates that the applicant was in the United States prior to January 1, 1982. The applicant submitted 1982, 1983, 1984, 1985, 1986, 1987, and 1988 tax returns, but none for 1981. The applicant submitted no W-2 forms for 1981 or any previous year. Further, the applicant herself stated, on her Form I-589, Application for Asylum or Withholding of Deportation, that she entered the United States during 1982.

The evidence, as a whole, suggests that the applicant did not enter the United States before January 1, 1982. Pursuant to section 245A(a)(2) of the Act, the instant application may not be approved.

Further, [REDACTED] all of whom lived in Mexico at all salient times, declared that the applicant resided in the United States during and subsequent to October 1987. [REDACTED] stated that they were able

so to attest because they saw the applicant previously in Mexico. [REDACTED] stated that she was able so to attest because the applicant's family kept her informed of the applicant's whereabouts. This implies that, prior to that time, they knew that the applicant lived in Mexico.

The applicant herself, in her June 5, 2001 declaration, stated that she left the United States "in about 1987" and returned to the United States during October 1987. This, too, suggests that, prior to her return to the United States during October 1987, she was absent from the United States for considerably longer than 45 days.

The evidence indicates that the applicant was absent from the United States for more than 45 consecutive days during and prior to October 1987. The record contains no indication that the prolonged absence was due to an emergent reason, within the meaning contemplated in 8 C.F.R. § 245a.2(h) and explained in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), that prevented the applicant from returning within 45 days. For this additional reason, the application may not be approved.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act and 8 C.F.R. § 245a.2(h). The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.