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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-097-12049

Office: LOS ANGELES

Date: AUG 05 2009

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.

John F. Grissom  
Acting 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 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 noted the inconsistencies in statements made by the applicant and the declarants and that the receipts and other evidence submitted were unidentifiable and therefore insufficient to support the applicant's claimed presence in the United States. 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 director's decision was erroneous and that the evidence she submitted is sufficient to establish her eligibility for the immigration benefit sought. The applicant also asserts that there have been no material misrepresentations made and that she has met her burden of proof.

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. See 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 applicant submitted copies of photographs, receipts and ticket stubs dated from 1981 through 1988; however, the documents are not identifiable or verifiable and therefore insufficient as evidence of the applicant’s claimed residence in the United States.

The record of proceeding contains a copy of a receipt for registered mail, registered no. [REDACTED], dated January 26, 1987, that the applicant submitted with her Form I-687 application. The customer completion section of the receipt had been left blank. On appeal; however, the applicant submits the same original receipt, with registered no. [REDACTED] that has now been filled in with the name [REDACTED] as the sender, and the applicant’s name as the receiver with the applicant’s address listed as [REDACTED] in Los Angeles, California. Here, the inconsistencies and contradictions cast doubt on the applicant’s evidence and proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, [REDACTED] states she sent the package to the applicant at the [REDACTED] address, so she filled it out on the advice of an acquaintance after leaving it blank the first time. The applicant did not explain the origins of the receipt in the response to the Notice of Intent to Deny (NOID), when she initially submitted the receipt. The explanation on appeal does not adequately explain the inconsistencies in the two documents. Further, the AAO notes that the applicant's initially submitted Form I-687 address does not list the [REDACTED] address as her address from 1985 – 1987. The record does not explain why the applicant initially stated that she resided on [REDACTED] from 1981 through 1987; and then amended her I-687 at the time of her interview to include three different addresses for the same time period.

The applicant submitted the following evidence:

- A declaration from [REDACTED] who stated that she has known the applicant since living in Peru and has personal knowledge that the applicant has been present in the United States since 1981. She also stated that she and the applicant lived together for about two years beginning in January of 1981, and that the applicant took care of her sick mother. The declarant fails to specify the address where the applicant resided.
- Declarations dated February 7, 2007 and June 16, 2007 from [REDACTED] who stated that she has known the applicant since 1982. She stated that when she first met the applicant, the applicant was living with a friend from Peru and was taking care of the friend's sick mother on [REDACTED] in Highland Park. The declarant also stated that she was advised to fill in the blank registered mail receipt because it represented the receipt she received from sending a package to the applicant in 1987. The declarant stated that she would visit the applicant at [REDACTED] and [REDACTED] in Los Angeles. Here, the applicant did not state on her initially submitted Form I-687 application that she ever resided on [REDACTED] in Highland Park.

These declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Their statements do not supply enough details to lend credibility to such a long-term relationship with the applicant. Given these deficiencies, these declarations have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 inconsistencies found in the record, and the

applicant's reliance on evidence with little 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.