U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: FEB 03 2009
MSC 06 096 11627

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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. In so finding, the director noted:

> You have submitted an affidavit of witness from affiant, [redacted] attesting that he had known you and you resided at [redacted] CA, from 1977 to present. However, you reported on your application that you lived at the address stated above since from March of 2004 to present. The affiant statement and your application are not credible. You also submitted an affidavit of witness from [redacted], who attested that she had known you since 1983 and you testified that you first met her in 1985. The affiant [redacted] attested that you worked with her as a baby sitter from 1991 to 2005 and you testified that you first met her in 1992. Affiants [redacted] and [redacted]; attested that they had known you since the year of 1987 and you confirmed it. Affiant [redacted]., attested that he had known you since 1990 and you confirmed it. Affiants [redacted]; and [redacted] attested that they had known you in the year 2003 and you confirmed it.

The body of the applicant's Form I-694, Notice of Appeal of Decision Under Section 210 or 245A reads, in its entirety:

> The reason I am filing this appeal is because you are denying my case and I believe I may have the opportunity to prove that I am in this country for more than 20 years helping raise many children and I don't have any criminal record. Because I have a normal life and moral character of helping families with their children and that is my way of life. So, I apologize to reconsider your decision on my case.

The applicant submits a letter dated April 16, 2007, acknowledging that her application was not complete and explaining that she was not ready with the information at the time she filled it out. She submits a new list of the addresses where she lived and a new work history chronology. The applicant provides no further documentation for consideration.

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). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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 pertinent evidence in the record is described below.

1. An affidavit of witness dated February 8, 2006, from [redacted] an acquaintance, who states that he knows the applicant resided at [redacted] in Norco, California, from 2003.

2. An affidavit of witness dated February 28, 2006, from [redacted] an acquaintance, who states that he knows the applicant resided at [redacted] in Norco, California, from 2003.

3. An affidavit of witness dated February 28, 2006, from _____ a friend of the applicant's daughter, who states that he knew that the applicant resided at [redacted] in Norco, California, from 1987.

4. An affidavit of witness dated February 28, 2006, from , an acquaintance, who states that she knows the applicant resided at in Norco, California, from 2003.

5. An affidavit of witness dated February 28, 2006, from , an acquaintance, who states that he knew that the applicant resided at in Norco, California, from 1987.

6. An affidavit of witness dated February 28, 2006, from an acquaintance, who states that he knew that the applicant resided at in Norco, California, from 1990.

7. An affidavit of witness dated March 6, 2006, from a friend, who states that she knows the applicant resided at in Norco, California, from 1987

8. **A notarized statement from** , dated February 22, 2006, who states that the applicant cared for her children at her house in Santa Ana, California, from 1983 to 1991.

9. A notarized statement from z dated February 22, 2006, who states that the applicant cared for her children at her house in Santa Ana, California, from 1977 to 1983.

10. A notarized statement from dated March 6, 2006, an acquaintance, who states that the applicant resided at in Norco, California, from 1977.

On her Form I-687, the applicant stated she resided at in Norco, California, from March 2004 until January 4, 2006, the day she filed her application. She listed no other previous addresses. On appeal, the applicant states she was living at the residence of the family, taking care of their children, at Santa Ana, California, from 1977 to late 1983. This information is not consistent with the affidavit of witness evidence provided from and Josefina Jimenez who stated that they knew she resided at since 1983, (Items # 1, # 2 and # 4 above), and from who stated he knew she resided at since 1977. (Item # 10). does not indicate in his affidavit that the applicant resided at his home.

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). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

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 applicant's asserted residential histories provided at her interview, on appeal and on her I-687 are accompanied by inconsistent evidence.

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. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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