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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date: FEB 03 2009
MSC 06 101 30630

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 stated:

In your interview on November 27, 2006 under oath and in writing you stated that you were present in the U.S. prior to January 1, 1982. Your submitted evidence as proof of your presence in the U.S. prior to January 1, 1982 was affidavits from known acquaintances. You failed to submit verifiable evidence from 1981 through 1988 such as rental receipts, bills from doctors or dentists, or sales receipts, common receipts we are given for services rendered. You state you had no new evidentiary proof to submit. It is your responsibility to provide the Service with documentation showing your eligibility for adjustment, you have failed to do so.

On appeal, the applicant states that the reason she does not have sufficient proof to verify she resided in the United States from 1981 to 1988 is because she gave her documents to her ex-husband who told her that he had sent in applications for both of them. She further states that she and her former husband divorced in September 2002, and although she requested that he provide her with any document which belonged to her, he always said that he had no documents. She submits additional 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. A letter dated March 30, 2006, from [REDACTED] Inc., who states that the application has worked as a cook at its location in Sun Valley, California, and in Lankershim from approximately 1982 to 1986 and then again during 1988 to 1993.
2. A copy of an affidavit of witness dated April 20, 2006, from [REDACTED] who states that she has known the applicant since 1982 when she came to work at [REDACTED] located on [REDACTED] North Hollywood, California, and that she was employed as a cook from 1982 to 1986.
3. A copy of a notarized statement dated May 21, 2007, from [REDACTED] who explains that she and the applicant used to work for [REDACTED] (now deceased), who owned [REDACTED]. She states that she met the applicant in the beginning of 1982 and worked with her as a cook until the applicant changed companies in 1986.

On her Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, the applicant stated that she worked for [REDACTED] on [REDACTED] in North Hollywood, California, as a cook from 1982 to 1986. This statement is reinforced by the affidavit of witness from [REDACTED]s and the notarized statement from [REDACTED] (Items # 2 and 3 above), who both state that she worked for [REDACTED] but contradicted by the statement from [REDACTED] (Item # 1), who states that she worked for [REDACTED] during the same period. Additionally, the employment verification letter from [REDACTED] (Item # 1), does not provide the applicant's address at the time of employment 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. 8 C.F.R. § 245a.2(d)(3)(i).

4. A copy of the applicant's California Department of Motor Vehicles Receipt dated April 5, 1988.
5. Fifteen documents in the form of notarized statements, affidavit of witness, and letters from acquaintances, friends, co-workers, and family asserting the applicant resided in the United States during the requisite period.

The director found the applicant had failed to submit verifiable evidence from 1981 through 1988 such as rental receipts, bills from doctors or dentists, or sales receipts, and other common receipts given for services rendered. On appeal, the applicant indicates that she once had such evidence but her ex-husband is responsible for the documents not being in her possession. She has submitted no evidence to support her assertion. It is noted that the earliest evidence outside the statements of others that the applicant was actually in the United States during the requisite period is the copy of the applicant's California Department of Motor Vehicles Receipt dated April 5, 1988. (Item # 4). It is also noted that on her Form I-687, she stated she left the United States to Mexico to get married from December 1983 to January 1984, and to have a child from August 1984 to September 1984. Absent evidence to the contrary, the fact that the applicant was married in Mexico and gave birth to a child in Mexico indicates that she was residing in that country in 1983 and 1984.

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 her 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 employment and residential histories on her Form 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.