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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-237-13130

Office: LOS ANGELES

Date: FEB 04 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:
[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.


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 that the applicant submitted affidavits that were lacking in detail, were not credible, and were not amenable to verification. The director further noted that the applicant submitted a lease agreement that did not contain her signature. The director noted that the copy of the applicant's California Identification Card appeared to be evidence of her presence in the United States since 1986. The director also noted that letters submitted, that were said to be from Guatemala, were not translated into English. 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, counsel asserts that the director failed to properly review and weigh the evidence submitted by the applicant, and that through the assistance of counsel the applicant is able to submit additional evidence that further substantiates her claim of eligibility for the immigration benefit sought.

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 record shows that the applicant submitted the current Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on May 25, 2005. The applicant submitted a previous Form I-687 on September 19, 1995.

The applicant submitted copies of her California Identification Card and California DMV registration cards dated 1986 and 1988. Although these documents serve as some evidence of the applicant’s presence in the United States since 1986, they are insufficient to establish her continuous unlawful residence in the country since before January 1, 1982, and throughout the requisite periods.

The applicant submitted an affidavit in which she stated that she entered the United States on November 15, 1981, and that at that time she lived with her aunt [REDACTED]. The applicant stated that 2 days after moving in with her aunt at [REDACTED] in Los Angeles, California, her aunt moved out, and she became the leaseholder of the 1 bedroom apartment until July 31, 1987. The applicant stated that she began working as a housekeeper for many people in 1981 and that she attended ESL classes at Berendo Branch of Los Angeles Community Adult School during the fall trimester of 1982. The applicant further stated that she has been employed by Vermont Fishing & Tackle Company as a full-time clerk since September of 1984. The applicant also stated that other than the lease agreement, she has no proof of her residency in the United States prior to January 1, 1982, because the 15th Street apartment's utility bills were in her aunt's name until she died in 1987.

The applicant submitted copies of untranslated handwritten letters. The regulations require that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claim. Accordingly, the evidence is not probative and will not be accorded any evidentiary weight in this proceeding.

The applicant also submitted a copy of a letter dated April 26, 2006 from [REDACTED] a teacher advisor from the Los Angeles Community Adult School in which she stated that the applicant attended ESL classes at the Berendo Branch of the adult school during the fall trimester of 1982, and that the applicant was a student in good standing. Here, the declarant fails to specify the dates of the applicant's attendance at the school or the origin of the information provided. It is also noted that the declarant has failed to submit supporting documentation such as enrollment records, school transcripts, or ESL certification documents to substantiate her claim. The statement is insufficient to demonstrate the applicant's presence in the United States prior to January 1, 1982 and throughout the requisite period.

The applicant submitted as evidence, a photo copy of a lease agreement dated December 1, 1981 bearing the name [REDACTED] as lessor and [REDACTED] as lessee. The lease agreement is for the premises known as [REDACTED] in Los Angeles, California for the amount of three hundred ninety five (\$395.00) dollars per month, to be paid in advance on the 1st day of each and every month. [REDACTED] signature appears on the photocopy of the lease agreement. [REDACTED] stated in her affidavit dated August 29, 2001, that she met the applicant and that in 1981 she was the property manager at the apartment complex [REDACTED] where they lived. [REDACTED] also submitted a letter dated May 8, 2006 in which she stated that she has known the applicant since November 1981 when the applicant came to live with her aunt [REDACTED] at [REDACTED] in Los Angeles, California. Here, the lease agreement does not bear the applicant's signature as lessee. [REDACTED] does not indicate in her affidavit or letter that she entered into a lease agreement with the applicant. There is no evidence to demonstrate that [REDACTED] was ever employed as the property

manager for the apartment or that she had the power and authority to enter into a lease agreement with the applicant. The lease agreement fails to specify the apartment number that was leased to the applicant. It is further noted that although the lease agreement is dated December 1, 1981, the applicant claimed in her affidavit that she entered the United States on November 15, 1981, and that 2 days after moving in with her aunt, her aunt moved out and she became the leaseholder of the 1 bedroom apartment.

Contrary to the applicant's statement in her affidavit concerning the apartment's utility bills being in her aunt's name from 1981 to 1987, the lease agreement was not a sublease, and it is specifically stated at section 10 of the lease agreement that the applicant, as lessee, shall pay for all basic utilities provided to the premises. It is also noted that although the lease agreement specifies that the applicant was to pay \$395.00 per month, on the first day of each month, she indicated on her previous Form I-687 application that she was employed as a housekeeper for many places from December 28, 1981 to August 1984, and earned only \$4,150.00 per year. Therefore, the applicant was not employed at the time she allegedly entered into the lease agreement; the annual lease amount of \$4740.00 exceeded the amount earned by the applicant from 1981 to 1984. It is further noted that in her affidavit dated May 17, 1996, [REDACTED] stated under penalty of perjury that she was the manager of the building rented to the applicant at [REDACTED] from November 1981 to July 1987. The applicant has failed to submit any rent receipts, bank statements, cancelled checks, or annual accounts statement to support her claimed residency at the above noted premises. Based upon the multiple discrepancies and many inconsistencies found in the record concerning the authenticity of the lease agreement, it cannot be accorded any weight in establishing the applicant's residence during the requisite period.

The applicant submitted a letter dated May 20, 1996 from [REDACTED] in which he stated that he rented out his property known as [REDACTED] in Los Angeles, California to the applicant since 1987. Here, the declarant has failed to submit documentary evidence such as a lease agreement, rent receipts, utility bills, cancelled checks, or income tax records to substantiate his claim. Therefore, the declaration can be accorded little weight in establishing the applicant's residence in the United States during the requisite period.

The applicant submitted the following attestations concerning her employment in the United States:

- A letter dated May 20, 1996 from [REDACTED] in which he stated that the applicant began working for him as a housekeeper on December 1, 1981, and that she worked 1 day a week. He further stated that the applicant worked for Vermont Fishing Tackle Company since December 1989 and presently works there as a clerk and assistant manager. A second letter dated May 10, 2006 from [REDACTED] stated that he employed the applicant as a housekeeper from 1981 to 1989, and that when he opened a second store, the applicant worked part-time as a cashier, and 6 months later she worked as a store manager. The statements are inconsistent with the applicant's statement on appeal and her previous Form I-687 application at part #36 where she stated that she was employed as a housekeeper at many places from December 28, 1981 to August of 1984, and that since September 1984

she was employed by Vermont Tacking Company full-time as a clerk. There has been no explanation given for the inconsistencies.

- An affidavit from [REDACTED] in which he stated that the applicant was employed by [REDACTED] as a housekeeper 1 day per week, from December 1, 1981 to 1989. He also stated that the applicant was employed by Vermont Fishing Tackle Company in December of 1989, and is presently working as an assistant manager and clerk. The declarant fails to clarify the origins of his statement or his affiliation with the Vermont Fishing Tackle Company. He fails to specify when and under what circumstances he met the applicant, and the frequency with which he saw and communicated with her during the requisite period. This affidavit is also inconsistent with the applicant's statement on appeal and her previous Form I-687 application at part #36 where she stated that she began working for Vermont Tacking Company in 1984.
- An affidavit dated May 7, 1996 from [REDACTED] in which he stated that he has employed the applicant as a housekeeper 1 day per week since 1982. This statement is inconsistent with what the applicant indicated on her current Form I-687 where she stated that she had been employed by [REDACTED] from January 1982 to 1989, and under oath on appeal and on her previous Form I-687 where she stated that she had been employed as a housekeeper at many places from December 28, 1981 to August 1984.
- A letter dated May 12, 2005 from [REDACTED] in which he stated that he has known the applicant for over 15 years and that she has been employed at Vermont Fish & Tackle Company as a manager. The declarant fails to indicate the origins of his information or his association with the company. He fails to specify when and under what circumstances he met the applicant or the frequency with which he saw and communicated with the applicant during the requisite period. It is also noted that he has misstated the company name.
- Two letters dated May 5, 2005 from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1983 and 1985 respectively, and that they have known the applicant to be a diligent domestic worker and a very responsible worker at the Vermont Fishing Tackle Company from that time to the present. The declarants fail to demonstrate first-hand knowledge of the applicant's employment history or their association with the Vermont Fishing Tackle Company.¹

Here, the statements concerning the applicant's employment are inconsistent with the applicant's statement on appeal and her previous Form I-687 application. This inconsistency calls into question the credibility of the declarant's statements. In addition, the attestations do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the address(es) where the applicant resided during the claimed employment periods, nor do they

¹ It is noted that the declarant [REDACTED] appears on one or more affidavits contained in the applicant's file as the notary public.

indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel, payroll or tax records, or time cards that pertain to the requisite period to corroborate the assertions made by the declarants. Because the declarations are inconsistent with statements made by the applicant, and because they do not conform to regulatory standards, they can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] and a letter from [REDACTED] in which they stated that they met the applicant on December 25, 1981 at a Christmas celebration given at the applicant's aunt's house at [REDACTED] in Los Angeles, California. Here, the declarant's statements are inconsistent with what the applicant stated under oath in her affidavit, where she specified that she moved in with her aunt upon entering the United States on November 15, 1981, and that her aunt moved out of the apartment 2 days later. The applicant also stated that she entered into a lease agreement on December 1, 1981, taking over the apartment from her aunt. There has been no explanation given for the discrepancy.

The applicant submitted a letter dated May 3, 2006 from [REDACTED] in which she stated that she has known the applicant since November 1981 when the applicant came to live in the United States with her aunt [REDACTED], the declarant's neighbor. She also stated that she and the applicant have become close friends and that she has been in touch with the applicant. This declaration is inconsistent with the affidavit submitted by the declarant on May 17, 1996, noted above, where she stated that she was the property manager of the building located at [REDACTED] in Los Angeles that was rented by the applicant from November 1981 to July 1987.

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 attestations submitted are lacking in detail and are inconsistent with statements made by the applicant. The employment letters fail to conform to regulatory standards. The lease agreement is inconsistent with statements made by the applicant and other declarants. 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). The applicant has failed to submit any objective evidence to explain or justify the many inconsistencies.

The absence of sufficiently detailed 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 applicant's reliance upon evidence that fails to conform to regulatory standards, is inconsistent with her statements, contradict one another, and are lacking in detail, 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.