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FILE: [REDACTED]  
MSC-05-321-10716

Office: LOS ANGELES

Date: **FEB 17 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:

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 District 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 denied the application, finding 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.

On appeal, the applicant, through counsel, asserts that she has established her unlawful residence for the requisite time period.

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. 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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of

eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters of relationship (hereinafter referred to as "statements") and a copy of the applicant's passport. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains two identical form-letter witness statements from \_\_\_\_\_ and \_\_\_\_\_. Although the witnesses state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 27-year relationship with the applicant. For instance, the witnesses do not indicate how they date

their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the witnesses do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits 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 for the entire requisite period.

The record contains three witness statements from [REDACTED]. Two of these documents are form-letter witness statements that fail to provide any details on [REDACTED] relationship with the applicant and are inconsistent. One statement, dated October 19, 2006, provides that he has known the applicant since December 1984 and they first met at a Christmas Party in Los Angeles. The other statement, dated December 13, 2005, provides that he is aware that the applicant has resided in the United States continuously since her entry on January 2, 1981 through May 4, 1988. It is, therefore, unclear whether [REDACTED] first met the applicant in December 1984 or January 1981. Furthermore, the statements fail to indicate how frequently he had contact with the applicant and how he has personal knowledge of the applicant's presence in the United States. The third witness statement from [REDACTED] dated October 19, 2006, again states that he met the applicant at a Christmas party in Los Angeles. However, as with Mr. [REDACTED]'s other two statements, this statement fails to provide details on his relationship with the applicant during the requisite period. This lack of detail casts doubt upon the credibility of Mr. [REDACTED]'s claim of having known the applicant during the requisite period. As such, the statement has 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 for the entire requisite period.

The record also contains two witness statements from [REDACTED] dated October 18, 2006. One document is a form-letter witness statement that provides she has personal knowledge of the applicant's residence in the United States since February 1981. However, this statement fails to indicate how frequently she had contact with the applicant and how she has personal knowledge of the applicant's presence in the United States. The second document is a detailed letter from [REDACTED] explaining that she met the applicant on January 1, 1981 at a family gathering in Los Angeles. She states that the applicant resided at her home in Los Angeles from February 1981 to September 1997. This witness statement provides some detail on [REDACTED] initial meeting with the applicant and their subsequent residence together during the requisite period; therefore it is of some probative value. The AAO notes, however, that this one witness statement does not alone meet the applicant's burden of proof in this proceeding. According to the regulation at 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend in part on the extent of the documentation.

The remaining evidence in the record is comprised of the applicant's application form and passport. The applicant's application form fails to provide any information on where she lived or was employed during the requisite period. Moreover, the applicant's dates of absence from the United States as listed on her application form are inconsistent with information contained in her

passport. The application form states that the applicant traveled to Mexico from December 1987 to January 1988. It lists no other absences from the United States during the requisite period. The applicant corroborated this date of travel in the sworn statement she gave during her interview at the District Office. However, the applicant's passport, issued April 24, 1997, contains the following notation:

Observation: Previously held passport no. [REDACTED] issued by [REDACTED] on 8 Apr 1987 which has expired. The passport cancelled and returned to the holder.

This information indicates that the applicant was in Calcutta, India during the requisite period. The applicant failed to provide her absence from the United States on April 8, 1987 either on her application form or during her sworn testimony. This inconsistency is material to the applicant's claim in that it has a direct bearing on the applicant's continuous residence in the United States during the requisite period. The inconsistency casts doubt upon the applicant's claim of having continuously resided in the United States during the requisite period. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required 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.