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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] Office: MIAMI Date: **JUL 23 2009**  
MSC-06-101-16149

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Miami. 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 (together comprising the I-687 Application). The director found the applicant inadmissible and thus, ineligible for temporary resident status because of her stated entries into the United States by fraud or willful misrepresentation in 1981, 1985, 1987, and 1988, in violation of Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). Further, the director denied the application because the applicant failed to submit credible evidence to support her claim of continuous residence in the United States since before January 1, 1982.

The record reflects that the applicant is represented by [REDACTED] of the Caribbean Social Services. Neither [REDACTED] nor the agency is authorized or recognized by the Board of Immigration Appeals to represent aliens before United States Citizenship and Immigration Service (USCIS) under 8 C.F.R. § 292.1. Therefore, neither will receive notice of these proceedings.

On appeal, the applicant claims that the application should not be denied solely because she only submitted affidavits. She further contends that she has submitted sufficient credible evidence to establish her eligibility for temporary resident status. Additionally, the applicant states that she is admissible under the CSS/Newman Settlement Agreements even though she has entered the United States by fraud or willful misrepresentation during the requisite 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)(1) 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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.

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 (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 has provided credible documentation to prove by a preponderance of the evidence that she has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

As evidence of her continuous residence in the United States continuously since before January 1, 1982, the applicant submitted ten affidavits. All of the affiants state that the applicant has been residing and working continuously in the United States since June 1981. All list the places where the applicant has been working since 1983. Further, all claim that the applicant lived with [REDACTED] in the United States in 1981, but none states with specificity where [REDACTED] lived or how long the applicant stayed with [REDACTED]. None describes with sufficient detail how he or she first met the applicant in the United States or whether he or she has direct personal knowledge of the events and circumstances of the applicant's life in the United States during the requisite period. Simply listing the address at which the applicant has been working since 1983

without providing any detail about the events and circumstances of the applicant's whereabouts and life in the United States during the requisite period does not establish the reliability of the assertions and does not establish her continuous residence in the United States since before January 1, 1982.

Additionally, the applicant claims in her application to have worked in various places as a custodian or a housekeeper during the requisite period, but she has not submitted any evidence such as pay stubs, letters from her employers, or other evidence to establish the credibility of her claim. While the application should not be denied solely because the applicant has only submitted affidavits, the submission of affidavits alone will not always be sufficient to support the applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the affidavits submitted, when considered individually and together, do not establish that the applicant resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record detract from the credibility of her 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has 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.

Additionally, the applicant states on appeal that she is admissible under CSS/Newman Settlement Agreements even though she has procured admission into the United States by fraud during the requisite period. The AAO disagrees. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. The applicant is inadmissible pursuant to Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) and thus, ineligible for the benefit sought. Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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