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**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED]
MSC-06-101-19993

Office: LOS ANGELES

Date: **MAR 11 2009**

IN RE: [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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, or *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, and 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 to United States Citizenship and Immigration Services (USCIS). The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted that the year "1983" in an appointment letter from [REDACTED] appeared to be altered and further stated that the applicant's testimony concerning her entry into the United States in April 1980 was not consistent with the evidence of record. Moreover, the director indicated in her decision that the affidavits submitted were neither sufficient nor credible to establish continuous residence in the United States for the duration of the requisite period.

On appeal, the applicant submits a brief in which she states that the appointment letter the director specifically referred to in her decision is not altered. She further acknowledges that while she does not remember exactly when she initially entered the United States, she indicates in her brief that she resided continuously in the United States throughout the entire requisite period. On appeal, the applicant resubmits all of the documents she previously has submitted along with the application.

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.

At issue here is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence in the United States since before January 1, 1982 and through the date she or her mother filed or attempted to file the application for temporary resident status.

During an interview with a United States Citizenship and Immigration Service (USCIS) officer on November 28, 2006, the applicant stated that she initially entered the United States illegally with her mother in April 1980, when she was two years old. She further claimed that sometime in 1987, her mother took her and her two older brothers to an immigration office located in ██████████ Los Angeles, California, to file for amnesty but their amnesty application was turned down since they had left the United States in June 1987 for a brief visit to Mexico.

To show continuous residence in the United States between 1980 and 1987, the applicant submitted several appointment cards for medical exams, various immunization records and a school record. In denying the application, the director stated that the year "1983" in one of the appointment cards seems to be altered. Upon review, although the AAO cannot confirm whether the date is altered, it determines that the appointment cards along with the immunization and school records together are relevant, credible, and probative as evidence that the applicant resided in the United States continuously from 1983 to 1985, but are insufficient to establish continuous residence in the United States throughout the entire requisite period.

In an attempt to show continuous residence in the United States throughout the entire requisite period, the applicant submitted four signed declarations from friends and relatives who claim to have known her since she and her mother first came to the United States in 1980. All of them state in their declarations that they have been good friends with the applicant. None of them, however, indicate that they have direct personal knowledge of the applicant's continuous residence in the United States. For instance, none of them indicates where or under what circumstances they met the applicant, the address or addresses at which she lived during the entire requisite period, their frequency of contact with her during this period, or any other details of the events and circumstances of her or her mother's residence. The lack of detail is significant, considering their claim that they have known the applicant and her mother since 1980.

As stated above, to be considered probative and credible, affidavits or declarations must do more than simply state that an affiant or a declarant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. *Matter of E- M--*, *supra*. Since these declarations are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's continuous residence in the United States since 1980.

Finally, at her interview, the applicant stated that she was two years old when her mother and she entered the United States in April 1980. One of the immunization records, however, shows that the applicant received an immunization in Mexico on August 15, 1980. Thus, in denying the application, the director noted that the applicant's testimony regarding her first entry into the United States in April 1980 was inconsistent with the evidence of record. On appeal, the applicant acknowledges that she does not remember when she first came to the United States but asserts that she and her mother initially entered the United States sometime in 1980. Upon review, the AAO considers the passage of time and the age of the applicant when she initially arrived in the United States and determines that the inconsistencies between the applicant's testimony and the evidence of record regarding this matter not key to the final holding of this case.

Casting doubt to the applicant's claim that she continuously resided in the United States between 1980 and 1987 is the lack of relevant detail in the declarations concerning the applicant's residence in the United States since 1980 combined with the absence of contemporaneous documents to establish that she together with her mother resided in the United States throughout the requisite period. The evidence in this case consists of several appointment cards for medical exams, various immunization records and a school record, which is credible and probative as evidence of the applicant's presence and continuous residence in the United States between 1983 and 1985, but when this evidence is combined with other evidence of record *i.e.* the declarations, they do not establish by a preponderance of the evidence that the applicant resided continuously and was physically present in the United States during the requisite periods.

The absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously 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 in the record, 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.

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