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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE: [REDACTED]  
MSC 06 101 19061

Office: NEW YORK

Date: **MAR 25 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.

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, New York. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. 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 listed the five residential addresses that provided from 1981 to 1989 and found that the information contradicted the addresses that the applicant provided on her current application.

On appeal counsel states:

The present notice of appeal is submitted on behalf of our client in order to clarify the fact that she is eligible for legalization and to amend the last I-687 application filed on her behalf by our office with an involuntary mistake. This action looks to correct this mistake looks to show that our client has lived at different addresses as per her original I-687 submitted for her back in 1993. Our client is claiming benefits under section 245A of the Immigration and Nationality Act. Your personal consideration for humanitarian reasons is greatly appreciated.

Counsel provides a new list of residential addresses for the applicant that coincides with the list outlined by the director and argues that these addresses should have been listed on her current Form I-687.

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)(1).

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 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, 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 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 notarized statement from the applicant certifying that she resided in the property located at [REDACTED] from December 1981 until August 1989.
2. A notarized statement from the late [REDACTED] who states that the applicant resided in his property located at [REDACTED] New York, from December 1981 until August 1989.

3. An affidavit of witness from [REDACTED] who states that she has known the applicant since 1981, and that the applicant resided in Brooklyn, New York, from December 1981 to August 1989.
4. An affidavit of witness from [REDACTED] who states that she has known the applicant since 1981, and that the applicant resided in Brooklyn, New York, from December 1981 to August 1989.
5. An affidavit of witness from [REDACTED] who states that the applicant resided in Brooklyn, New York, from December 1981 to August 1989.
6. An affidavit of witness from [REDACTED] who states that she has known the applicant since 1982, and that the applicant resided in Brooklyn, New York, from January 1982 to August 1989.
7. An affidavit of witness from [REDACTED] who states that she has known the applicant since December 1981, and that the applicant resided in Brooklyn, New York, from January 1982 to August 1989.
8. An affidavit of witness from [REDACTED] who states that she has known the applicant since 1981, and that the applicant resided in Brooklyn, New York, from December 1981 to August 1990.
9. A notarized statement from [REDACTED] who states he has known the applicant since 1982.
10. A notarized statement from [REDACTED] who states he has known the applicant since 1982.
11. A notarized statement from [REDACTED] who states that he has known the applicant since 1983.
12. A notarized statement from [REDACTED] who states that she has known the applicant since 1987. A notarized statement from [REDACTED] who states that the applicant worked at her house doing cleaning from February 1982 until 1985.
13. A notarized statement from [REDACTED] who states that he has known the applicant since December 1981. He further states that after working at his parent's house doing weekly house maintenance, she started working at his apartment in July 1985, and continued working until he moved to Nassau County in November 1991.

In her notarized statement (Item # 1 above), verified by the notarized statement of [REDACTED] [REDACTED] the applicant certified that she resided in the property located at [REDACTED] in Brooklyn, New York, from December 1981 until August 1989. However,

on her Form G-325 A, Biographic Information, that she signed in June 2001, the applicant stated that she lived at [REDACTED] New York from December 1981 until June 2001. On her current Form I-687 filed on January 9, 2006, the applicant stated she lived at [REDACTED] Park, New York, from December 1981 until it was filed. On appeal, counsel wants to change the applicant's address on her current Form I-687 to [REDACTED] # 3, Brooklyn, New York, from December 1981 to August 1989 and then to an address in Elmhurst, New York from September 1989 to June 1990. Even if this change were accepted, it does not rectify the discrepant address information provided by the applicant for the record. The address information provided in the affidavit of witness statements (Items # 3 thru # 7) that the applicant resided in Brooklyn until August 1989 is not consistent with the address information provided in the affidavit of witness statement provide by [REDACTED] (Item # 8) who stated the applicant resided in Brooklyn until August 1990. Considering that the affiants (Items # 9 thru 11) claim to have known the applicant for more than 20 years, the notarized statements lack sufficient detail to confirm that the applicant resided in the U.S. for the requisite period.

Additionally, the employment verification statements (Items # 12 and # 13) do not provide the applicant's address at the time of employment. 8 C.F.R. § 245a.2(d)(3)(i).

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 asserted employment and residential histories on her I-687, are accompanied by inconsistent and incomplete evidence.

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*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

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