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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
and Immigration
Services**

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FILE:

MSC 05 019 18480

Office: CHICAGO

Date:

JAN 28 2010

IN RE:

Applicant:

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. 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.

Perry Rhew
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, Chicago, Illinois, 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. 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 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 applicant has met the requirements of the Settlement Agreement as she entered the United States prior to January 1, 1982 and resided continuously since that time. Counsel submits additional evidence in support of the appeal.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit notarized April 25, 2003, from [REDACTED] who attested to the applicant’s Chicago residence at [REDACTED] from January 1980 to December 1989. The affiant attested to the applicant’s moral character.
- An affidavit notarized March 26, 2007, from [REDACTED] who indicated that she has resided at [REDACTED] since 1982 and that she met the applicant in 1982 at a Christian reunion at the church. The affiant indicated that the applicant rented a room in her house and that she was informed by the applicant of her entry into the United States through the San Ysidro port of entry.
- Affidavits from [REDACTED] and [REDACTED], who indicated that they have known the applicant since 1980. The affiants attested to the applicant’s moral character.

- Affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1981 and attested to the applicant's continuous residence in the United States since that time. [REDACTED] indicated, "with [the applicant] we would get together to visit the sick or at parties that we invited [the applicant] to."
- Affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1982 and 1983, respectively. The affiants attested to the applicant's continuous residence in the United States since that time.
- An affidavit from [REDACTED], who indicated that she has known the applicant since 1984 and attested to the applicant's moral character.
- A letter dated November 28, 1989, from [REDACTED] for [REDACTED] [REDACTED] in Chicago, Illinois, who indicated that the applicant has been in their employ since February 16, 1980.
- A letter dated March 28, 2003, from [REDACTED] at St. Francis of Assisi Church in Chicago, Illinois, who indicated that the applicant has been a parishioner from 1980 to 1987.
A letter dated May 7, 2006, from [REDACTED] of Apostolic Faith Tabernacle in Chicago, Illinois, who indicated that the applicant has been a member of the church since 1981.
A letter dated November 11, 2005, from [REDACTED] of Chicago, Illinois, which indicates that the applicant has been "a services recipient" since 1981.

The director determined that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits, and the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The director concluded that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982 and, therefore, denied the application on May 8, 2009.

On appeal, counsel submits:

- An affidavit from [REDACTED], who indicated, "I have known [the applicant] since 1986. We met in a Christian conference in 1987."
- A statement from Apostolic Assembly of the Faith in [REDACTED] in Chicago, Illinois reflecting the applicant's tithes and offerings in 1985 and 1986.
- An affidavit from [REDACTED] who indicated that she met the applicant in 1984 "in the church Asuncion." The affiant indicated that she has been friends with the applicant since that time.
- An affidavit from [REDACTED], who indicated that he has known the applicant for many years and considers the applicant to be a family friend. The affiant indicates that the affiant is his Godmother who attended his first communion on May 11, 1980.

The statements issued by the counsel have been considered. The evidence of record submitted, however, does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that she resided in a continuous unlawful status during the requisite period.

In her initial affidavit, [REDACTED] indicated that the applicant resided in her home from January 1980 to December 1989. However, in her subsequent affidavit, the affiant indicated that she met the applicant in 1982. As conflicting statements have been provided, it is reasonable to expect an explanation from [REDACTED] in order to resolve the contradictions. However, no statement from the affiant has been submitted to resolve her contradicting affidavits. As such, affidavits have little probative value or evidentiary weight.

The employment letter from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The letters from [REDACTED], and [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the pastors do not explain the origin of the information to which they attest.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The remaining affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.