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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 01 2010

MSC 06 102 13514

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.

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 initially denied and subsequently reopened by the Director, Los Angeles, California. The director denied the application again and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In the most recent denial, the director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate her residence in this country during the period in question. Counsel provides copies of previously submitted documentation as well as new documents in support of the appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 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. *See* 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. 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 petitioner 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on January 10, 2006. At part #4 of the Form I-687 application where applicants were asked to list all other names used or known by, the applicant provided no indication that she had used any other names. Subsequently, at part #30 of the Form I-687 application where applicants were asked to list all residences in the

United States since first entry, the applicant listed ' ' in Sacramento, California from September 1981 to 1984 and ' ' in City Terrace, California from 1984 to 1990. Further, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any information. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in this country dating back to January 1, 1982, the applicant testified that her sole employment consisted of self-employment as a house cleaner for an unspecified period from such date through the date the Form I-687 application was filed on January 10, 2006.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

Although the applicant did not claim that she was known by or had used any other names at part #4 of the Form I-687 application, the applicant submitted documentation bearing the names and ' ' in support of her claim of residence in the United States since prior to January 1, 1982. The applicant asserted that she used these names when she was married to from 1984 to 1988. However, the applicant failed to provide any evidence that she was married to any individual during the requisite period, much less an individual named between 1984 and 1988. In addition, the fact that applicant failed to list any names at part #4 of the Form I-687 application raises serious questions as to whether the applicant had in fact used any of the names cited above.

The applicant submitted a State of California Identification Card issued on September 13, 1985, which purports to bear her photograph, the name and the address in Los Angeles, California. The ID photograph bears resemblance to the numerous photographs of the applicant contained in the record. However, the applicant did not list in Los Angeles, California as an address of residence in this country for the required period or anytime thereafter at part #30 of the Form I-687 application.

The applicant included a Form 540A, California Short Tax Form, for 1988 listing the names and as the joint filers of this tax return. These individuals claimed a renter's credit at Part II of the Form 540A for renting a residence at in El Monte, California from January 1988 to December 1988. However, this information conflicted with the applicant's own testimony at part #30 of the Form I-687 application that she resided at " in City Terrace, California from 1984 to 1990.

The applicant provided a month to month rental agreement dated April 7, 1986 between lessor, and lessees, for premises at in Los Angeles, California. This will be given some weight.

The applicant submitted a paycheck stub dated March 8, 1986 from reflecting the earnings of " However, it must be noted that the applicant failed to claim any employment for this enterprise, but instead testified that she had been a self-employed house cleaner at part #33 of the Form I-687 application where applicants were asked to list all employment in this country dating back to January 1, 1982.

The applicant included medical records dated April 5, 1985 from the Orthopedic Hospital at , in Los Angeles, California reflecting the medical treatment of . These records list this individual's wife as and residence as , in El Monte, California. However, the applicant testified that she resided at " in City Terrace, California from 1984 to 1990 at part #30 of the Form I-687 application rather than the address on ., in El Monte, California.

The applicant provided the last page of a loan agreement dated November 8, 1984 that is signed by and as borrowers. Nevertheless, the credibility of this document is limited as the applicant did not include a complete copy of the loan agreement.

The applicant included single affidavits signed by and as well as three affidavits signed by While all of these affiants attested to the applicant's residence in the United States for the period in question, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period. In addition, all of these affiants admitted that they were related to the applicant. Consequently, the probative value of the testimony of these affiants is limited as they have acknowledged that they are members of the applicant's family with a direct interest in the outcome of these proceeding rather than disinterested third party witnesses.

The applicant provided an affidavit that is dated April 26, 2006 and signed by stated that she first the applicant twenty years ago at her friend's house and noted that the applicant was the niece of her friend. declared that the applicant babysat

the children of her friend as well as other neighborhood children. Nevertheless, the probative value of testimony is severely limited as it lacks sufficiently detailed and verifiable information to substantiate the applicant's residence in the United States for the period in question. Furthermore, failed to attest to the applicant's residence in this country prior to 1986.

The applicant submitted a letter of membership dated January 7, 2009 that contains an illegible signature and the letterhead and seal of the Cathedral of the Blessed Sacrament in Sacramento, California. The author of the letter indicated that the applicant had been a member of this parish from 1981 to 1984. However, the letter does not include either the title of the author or applicant's address of residence during the period that she was a member of the parish as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that the applicant failed to list any affiliation with this church at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant included a letter of membership that is dated October 11, 2006 and signed by who listed his position as pastor. The letter contains the letterhead and seal of Our Lady of Guadalupe Church in El Monte, California. stated that the applicant had been a member of this church's parish since 1984 and that she regularly fulfilled her religious obligations at the church. Regardless, failed to provide the applicant's address of residence during her affiliation with this church as required under 8 C.F.R. § 245a.2(d)(3)(v). In addition, it must be noted that the applicant failed to list any association with this church at part #31 of the Form I-687 application.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on February 17, 2009. In the notice of denial, the director noted that affiants who had provided supporting documentation did not submit evidence to demonstrate their residence in the United States prior to January 1, 1982.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate her residence in this country during the period in question. Counsel contends that the director imposed an ultra vires requirement on affiants who provided supporting documents by noting that such affiants had failed to submit evidence to demonstrate their residence in the United States prior to January 1, 1982. Although such information may be useful in determining the whether an affiant could provide credible testimony relating to an applicant's residence, a review of the pertinent statutes and regulations finds no requirement that affiants must establish their residence in this country for the requisite period. Further, a review of the record reveals that the applicant submitted evidence on appeal establishing that affiants who had provided supporting documentation were in a position to provide relevant testimony relating to the applicant's residence in this country for the period in question. Nevertheless, the director's imposition of this

standard must be considered as harmless error because the testimony of these affiants is of minimal probative value solely because such testimony lacks sufficient detail and verifiable information to corroborate the applicant's claim of residence in this country for the requisite period.

The absence of sufficiently detailed supporting documentation and the conflicting information relating to the applicant's use of other names seriously undermine the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.