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

PUBLIC COPY

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FILE:

Office: CHICAGO

Date: OCT 27 2006

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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a white rectangular background.

Robert P. Wiemann, 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 District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director determined that the applicant had not provided evidence to adequately establish that he resided in the United States in a continuous, unlawful status from a date prior to January 1, 1982 and through the date that he was dissuaded from filing the Form I-687. Therefore, he denied the application.

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish continuous, unlawful residence in the United States during the requisite period.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the application or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the Service. See *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.

An alien who applies for temporary resident status under the CSS/Newman Settlement Agreements has the burden to establish 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. See *Id.* 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).

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 during the relevant period, the regulation also permits the submission of affidavits and any other relevant document. See 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 states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. 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 either to request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, to deny the application or petition.

Here, the submitted evidence is relevant, probative and credible.

On August 9, 2004, the applicant filed the Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, pursuant to the terms of the CSS/Newman Settlement Agreements. He also indicated on the CSS/Newman (LULAC) Class Membership Worksheet, Form I-687 Supplement, which is dated June 22, 2004 and was submitted with the Form I-687 received on August 9, 2004, that he is a CSS class member.

The record includes the following documents in support of the applicant's claim of residence in the United States during the requisite period:

- a notarized declaration from a previous landlord that attests to the applicant's continuous residence in the landlord's building in Chicago during 1981-1987;
- two employment letters that attest to the applicant's employment in Illinois during the requisite period;
- an updated employment letter from one of these two employers that includes an updated contact telephone number;
- a letter from the president of an immigrant-aid voluntary agency that attests to the work that the applicant has done on behalf of immigrants in Chicago during 1986 and following years;
- copies of two Chicago apartment leases issued to the applicant during the requisite period;
- copies of nine envelopes mailed to the applicant in Chicago and postmarked during the requisite period;
- two rent receipts issued to the applicant in Chicago during the requisite period;
- a notarized declaration from the applicant's former roommate in Chicago regarding the applicant's continuous residence in the United States during the requisite period;
- three affidavits from long-time acquaintances of the applicant who reside in Illinois; and,

an updated affidavit from one such acquaintance.

The applicant submitted several other documents which make reference to him residing in Illinois after the requisite period. These documents are not relevant to the applicant's claim.

On August 2, 2005, the director issued a Notice of Intent to Deny (NOID). The NOID indicates that the applicant failed to submit adequate, credible evidence of continuous, unlawful residence in the United States during the requisite period. The director specified in the NOID that at the CSS/Newman Class Settlement Agreements interview the applicant testified that he maintained taxis for the [REDACTED] during the requisite period.¹ Yet, his written application indicates that he worked as a janitor at the [REDACTED]. The director also indicated that the applicant gave testimony regarding how long he was employed as a security guard, which was not consistent with the information on the written application. The director concluded that such inconsistencies called all of the applicant's documentation and his underlying claim into question. Thus, the director intended to deny the application.

In response, counsel asserted that the documents in the record were sufficient to demonstrate that the applicant had resided in the United States during the requisite period. Counsel emphasized that the applicant had given testimony that was consistent with the written application when he testified that he did work maintaining taxis at [REDACTED] in that the employment letter in the record indicates that the applicant had both taxi maintenance and janitorial duties while employed by [REDACTED]. Counsel also asserted that at the interview the applicant explained that he could only give an estimate of how long he had worked as a security guard. Counsel indicated that because so many years had passed since the applicant left that position, it was reasonable to expect that he might not recall precisely how long he held the position. Counsel also emphasized that the applicant worked as a security guard after the requisite period, and consequently, this position and the applicant's testimony regarding this position were not relevant to his claim. Counsel asserted further that there were no inconsistencies in the applicant's testimony or documentary evidence.

On December 22, 2005, the director issued a denial notice. In the denial, the director concluded that the applicant had failed to submit sufficient evidence to establish his continuous, unlawful residence in the United States during the requisite period.

On appeal, counsel asserts that the director has not demonstrated that any inconsistencies exist in the record and that the applicant has substantiated his claim of having continuously resided in the United States in an unlawful status during the requisite period. Counsel also indicates that, under the CSS/Newman Settlement Agreements, the director must notify the applicant of his or her right to appeal the director's denial to a Special Master, when the application is denied based on failure to demonstrate class membership. Yet, the director failed to notify the applicant of this right in the denial.

¹ The director erred in the NOID and referred to this company as the [REDACTED] rather than the [REDACTED]

The director did not deny the application based on the applicant's failure to demonstrate class membership. Thus, the special provisions of the CSS/Newman Settlement Agreements which relate to cases in which the director finds that an applicant was not able to demonstrate class membership do not apply.

The contemporaneous documents submitted by the applicant appear to be credible. The letters, declarations and affidavits submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses.

The applicant gave testimony that was consistent with information in the record when he testified that he did work maintaining taxis at [REDACTED] as the applicant's employment letters indicate that he had both taxi maintenance and janitorial duties while employed by [REDACTED]. Further, because so many years had passed since the applicant worked as a security guard, it was reasonable to expect that at the interview he might have to estimate the length of time that he held that position, if asked about it at the interview. Moreover, the applicant worked as a security guard after the requisite period. Consequently, this position and the applicant's testimony regarding this position are not relevant to his claim that he resided in the United States from a date prior to January 1, 1982 through the date that he was dissuaded from filing the Form I-687.

The director has not established: that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date through the date that he was dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

Thus, the applicant's appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.