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

LD

[Redacted]

FILE: [Redacted] MSC-05-302-12295

Office: NEW YORK

Date: **AUG 30 2007**

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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".

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, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director identified inconsistencies between the applicant's statements and the statements of an affiant. The director determined the applicant had failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory period. As a result, the director denied the application.

On appeal, the applicant attempted to address the apparent inconsistencies identified by the director.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

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 applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant 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 and 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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on July 29, 2005. 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 the following addresses during the requisite period: [REDACTED] from November 1981 to December 1986; and [REDACTED] from January 1987 to December 1990. The applicant initially provided no documentation in addition to the Form I-687 to support any aspect of his claim of continuous unlawful residence.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant submitted two affidavits. In his affidavit, [REDACTED] confirmed he met the applicant in Philadelphia, Pennsylvania in December 1981. [REDACTED] confirm the applicant resided in the United States for any specific portion of the requisite period. In her affidavit, [REDACTED] explained that she met the applicant in December 1981 at church. Ms. [REDACTED] did not confirm the applicant resided in the United States at any time.

In response to an additional Notice of Intent to Deny (NOID) issued on March 23, 2006, the applicant confirmed his presence in the United States since November 1981. The applicant also attempted to explain his difficulty in obtaining additional documentation due to his unlawful status in the United States. The applicant submitted evidence that the individuals who provided affidavits for him were present in the United States prior to or during the requisite period. Specifically, the applicant provided mortgage documentation for [REDACTED] and college admissions documentation for [REDACTED]

In denying the application the director explained that numerous attempts were made to contact Mr. [REDACTED] by telephone without success. [REDACTED] was contacted and interviewed by telephone, and she acknowledged that she knew of the applicant. However, the affiant could not say when she first met the applicant. She stated that she met the applicant at a church in Philadelphia and she and the applicant saw each other frequently. When asked about where the applicant had lived in the 1980s and 1990s, the affiant "seemed at a loss for words and could not answer." The affiant appeared to know very little about the applicant. She knew she and the applicant had known each other for a considerable time and that the applicant had lived in Philadelphia exclusively during the 1980s. This statement is found to be inconsistent with the applicant's statements on Form I-687, which indicate the applicant resided in New York throughout the requisite period. The affiant's inability to provide sufficient detail regarding the applicant, together with the inconsistency between her statement and the applicant's statements on Form I-687, calls into question whether the applicant actually resided in the United States throughout the requisite period. As a result of the applicant's failure to provide tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory period, the director denied the application.

On appeal, the applicant attempted to address the apparent inconsistencies identified by the director. The applicant stated, "[t]here is no contradiction whatsoever between what the affiants said (especially [REDACTED]) and what I stated . . . [REDACTED] and I were attending the same Church in the 1980's. The fact that she said I was living in Philadelphia was simply due to the fact I was very frequent there (I used to spend every weekend in Philadelphia although I was not living there)." This explanation is found not to be reasonable under the circumstances. Specifically, the affiant's inability to accurately identify the applicant's city of residence during the requisite period, together with her inability to provide other details about the applicant, calls into question whether she can credibly confirm the applicant's residence in the United States during the requisite period. The applicant did not address the unsuccessful attempts to contact [REDACTED]

In summary, the applicant has not provided any contemporaneous evidence of his residence in the United States relating to the 1981-1988 period, and has submitted affidavits that do not confirm the applicant's presence during the requisite period. Specifically, neither Mr. [REDACTED] nor Ms. [REDACTED] confirmed in their affidavits that the applicant resided in the United States for any specific portion of the requisite period. In addition, numerous attempts to contact Mr. [REDACTED] for verification were unsuccessful. When Ms. [REDACTED] was contacted, she was unable to provide sufficient detail regarding the applicant. In addition, her statements confirming the applicant's residence in the United States were inconsistent with the applicant's statements. The applicant failed to address the unsuccessful attempts to contact Mr. [REDACTED] and did not adequately explain the inconsistencies between his statements and Ms. [REDACTED] statements

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory statements contained in the applicant's I-687 application and oral statements by one of the affiants, and given the applicant's reliance upon

documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.