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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-244-13427

Office: BOSTON FIELD OFFICE

Date: DEC 03 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 "D. King" or similar, written over a horizontal line.

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 Director, Boston Field Office. The decision 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, on June 1, 2005. The director denied the application because she found the applicant failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residence in the United States during the requisite period.

On appeal, the applicant stated that he had established that he entered and maintained continuous unlawful residency in the United States. The applicant suggested that the director had misinterpreted the language in the CSS/Newman Settlement Agreements. Specifically, the applicant suggested that the director erroneously interpreted the CSS/Newman Settlement Agreements as requiring applicants to demonstrate that they have resided continuously in the United States between May 1988 and a future date.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. 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 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 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 includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on June 1, 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 no addresses during the requisite period. The applicant's first period of residence listed on Form I-687 began in 1996. It is noted that the record contains the applicant's Form I-20 Certificate of Eligibility for Nonimmigrant (F-1) Student Status issued on October 22, 1996. The applicant's failure to list any locations and periods of residence in the United States prior to 1996, together with the date of issuance of his Form I-20, tends to indicate the applicant did not reside in the United States prior to 1996.

The applicant include multiple declarations with his application. The applicant's mother, [REDACTED] provided a declaration for the applicant. The declarant stated that she lived in the United States with the applicant and her other children from November 1979 to September 1988 in New Jersey, New York, and Massachusetts. The declarant stated that she entered the United States through Canada, and she was afraid to enroll her children in school because she feared the immigration consequences. The declarant provided no information regarding the specific locations where she lived with her children, how she supported herself while home schooling her children, and whether she had any employment in the United States during the requisite period. Since the

declarant is the applicant's mother and indicated she was with him in the United States throughout the requisite period, it is reasonable to expect that she would provide considerable detail regarding the applicant's activities and places of residence during the requisite period. As a result, this declaration is found to lack sufficient detail.

The applicant provided three other declarations that are very similar in content. In her declaration, Cecelia Wleh stated that she has known the applicant's family since 1980. [REDACTED] met the applicant and his mother through a mutual friend during a community gathering in New Jersey. [REDACTED] lived in New York but kept in touch with the applicant's mother throughout her stay in the United States. [REDACTED] stated that the applicant and his mother left the United States in 1988. In her declaration, [REDACTED] stated that she is a family friend of the applicant's family. She stated that the applicant was living in the United States when she first met him in the summer of 1981. Her mother and the applicant's mother belonged to a community prayer group in the Worcester, Massachusetts area and always brought their children along. As a young adult, [REDACTED] [REDACTED] for the applicant's mother when she went to run errands. [REDACTED] in touch with the applicant's family until they left the United States in late 1988. In her affidavit, [REDACTED] stated that the applicant's mother was her personal friend during her stay in the United States. [REDACTED] was aware of the applicant's presence in the United States between 1979 and 1988. None of these declarations provided addresses where the applicant and his mother resided during the requisite period. Although the applicant's mother indicated she and the applicant lived in three different states during the requisite period, none of the other declarants made any reference to the applicant's having lived in multiple states. As a result, these declarations are found to lack sufficient detail.

In denying the application, the director found that the applicant failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residence in the United States during the requisite period. The director erroneously stated that the applicant failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residency in the United States prior to January 1, 1982, instead of from prior to January 1, 1982 until the date the applicant attempted to apply for temporary resident status. Although the director misstated Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2) and relevant requirements under the CSS/Newman Settlement Agreements, it is harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant stated that he had established that he entered and maintained continuous unlawful residency in the United States. The applicant suggested that the director had misinterpreted the language in the CSS/Newman Settlement Agreements. Specifically, the applicant suggested that the director erroneously interpreted the CSS/Newman Settlement Agreements as requiring applicants to demonstrate that they have resided continuously in the United States between May 1988 and a future date. It is noted that the decision does not indicate the director erroneously required the applicant to demonstrate he resided continuously in the United States after May 1988. Rather, the decision was based on the applicant's failure to demonstrate that he entered and began residing in the United States prior to January 1, 1982.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, has failed to provide information regarding his places of residence during the requisite period, and has submitted declarations that lack sufficient detail.

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 applicant's failure to indicate on Form I-687 that he resided in the United States during the requisite period, 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.