U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 17 2007
MSC-05-039-20277

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. 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.

for 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. 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 November 8, 2004. The director determined that the applicant had not established by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, she noted that the New York State Department of State Division of Corporations indicated businesses that the applicant listed as his places of employment on his Form I-687 had not yet registered as businesses on the dates that the applicant showed he worked for them, casting doubt on whether the applicant accurately listed his dates and places of employment in the United States on his Form I-687. The director also found that the affidavits the applicant submitted in support of his application were lacking, as no proof that the affiants were in the United States during the requisite period was submitted with those affidavits. The director denied the application as the applicant had not met his 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, the applicant asserts that he resided continuously in the United States for the duration of the requisite period. He submits identity documents for affiants from whom he submitted affidavits and attempts to account for inconsistencies noted by the director in her Notice of Decision.

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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her

application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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.* 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 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 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 Service 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 CIS on November 8, 2004. 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 showed his addresses in the United States during the requisite period to be as follows: [redacted] in Long Island City, New York from August 1981 until November 1983; [redacted] in Elmhurst, New York from December 1983 until December 1985; [redacted] in Jackson Heights, New York from January 1986 until January 1989. At part #31 where the applicant is asked to list all associations and churches of which he is a member, he indicates that he is a member of the Tsung Sun Social Club in New York. It is noted that this is the only organization listed in this section of the applicant's Form I-687. At part #33 of his Form I-687, the applicant indicates that during the requisite period, he was employed at [redacted]. on Canal Street in New York from August 1981 until July 1982; Loraine Fashions on East Broadway, New York from August 1982 until April 1983; Jubilee Fashions on Broadway in New York from May 1983 to December 1984; Ocean Empire Restaurant on [redacted] in Brooklyn from January 1985 until January 1986, [redacted] Restaurant on [redacted] in Brooklyn from February 1986 until February of 1988, and [redacted] Restaurant on [redacted] in Brooklyn from March 1988 until July 1999.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This

list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation that is relevant to the requisite period with his Form I-687:

- An affidavit from [redacted] that was notarized on July 19, 2004. In this affidavit, the affiant indicates that he knows that the applicant resided continuously in the United States for the duration of the requisite period and attempted to apply to adjust to Temporary Resident Status on February 22, 1988 during the original legalization period. He states that he knows this because the applicant told him that he did so on or around August 14, 1991. Here, the affiant does not indicate when or where he met the applicant or whether it was in the United States. Though he indicates that he knows that the applicant entered the United States before January 1, 1982, he does not indicate how he knows this, nor does he establish that the events and circumstances of the applicant's residence in the United States are personally known to him. He further fails to provide evidence that he himself resided in the United States during the requisite period. Because this affidavit is significantly lacking in detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

- An affidavit from [redacted] notarized on July 20, 2004. In this affidavit, the affiant indicates that he knows that the applicant resided continuously in the United States for the duration of the requisite period and attempted to apply to adjust to Temporary Resident Status on February 22, 1988 during the original legalization period. He states that he knows this because the applicant told him that he did so on or around August 14, 1991. Here, the affiant does not indicate when or where the met the applicant or whether it was in the United States. Though he indicates that he knows that the applicant entered the United States before January 1, 1982, he does not indicate how he knows this, nor does he establish that the events and circumstances of the applicant's residence in the United States are personally known to him. He further fails to provide evidence that he himself resided in the United States during the requisite period. Because this affidavit is significantly lacking in detail, it can be afforded little weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

In her Notice of Intent to Deny (NOID) issued on March 7, 2006, the director noted that the applicant did not submit contemporaneous documents in support of his claim of having resided continuously in the United States for the duration of the requisite period. She further noted that though the applicant submitted two (2) affidavits in support of his application, he did not submit proof that those affiants had direct personal knowledge of the events and circumstances of his residency. She stated that credible affidavits include documentation identifying the affiant, proof that the affiant was in the United States during the requisite period, evidence that there was a relationship between the applicant and the affiant, and a telephone number at which the affiant could be contacted to verify information in the affidavit. Here, the director found the affidavits submitted by the applicant lacking. The director granted the applicant thirty (30) days within which to submit additional information in support of his application.

In response to the director's NOID, the applicant submitted an additional letter. Details of that evidence are as follows:

- A letter from that is dated March 31, 2006. In this letter, indicates he is the Abbot of the , which is part of the Buddhist Association of New York. He states that the applicant has attended the Pu Chao Temple since November of 1981 and continues to attend the Temple. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. Here, does not provide an address at which he knows that the applicant resided during the requisite period. He further does not indicate how he knows that the applicant began to attend the temple in November of 1981. Further, it is noted that the applicant did not list either the Temple or the Buddhist Association of New York as organizations that he belonged to on his Form I-687. Therefore, because this letter is lacking in detail and because it conflicts with testimony provided by the applicant on his Form I-687, little weight can be afforded to this document in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since August of 1981. The only evidence submitted with the application that is relevant to the 1981-88 period were two (2) affidavits that were lacking in detail and a letter from an organization that the applicant did not indicate he was a member of on his Form I-687.

In denying the application the director noted the above, and the fact that her office found that the New York State Department of State Division of Corporations indicated that many of the companies for whom the applicant stated he worked for during the requisite period were not incorporated on the dates that the applicant claimed he worked for them on his Form I-687. She stated that her office found that: 1) Wendy's Sportswear, for which the applicant indicated he worked from August of 1981 until July of 1982 was not incorporated until January 4, 1984; 2) Loraine Fashions for which the applicant indicated he worked from August of 1982 until April of 1983 was not incorporated until December 19, 1989; 3) Ocean Empire Restaurant for which the applicant indicated he worked from January of 1985 until January of 1986 was not incorporated until July 30, 1997; 4) King Ho Restaurant for which the applicant indicated he worked from February 1986 to February 1988 was not incorporated until March 1, 1989. The director noted that the applicant did not submit pay stubs or tax returns that would indicate that any of these companies existed before these dates. The director found that this cast doubt on the applicant's assertion of having been employed by these companies during the requisite period.

On appeal, the applicant asserts that he resided continuously in the United States for the duration of the requisite period. He submits identity documents for two (2) affiants from whom he previously submitted affidavits and explains that although the companies for whom he worked were not incorporated on the dates he showed he worked for them on his Form I-687, they became incorporated after he stopped working for them. However, it is noted that the applicant did not submit any evidence to support this assertion. Further, though the applicant submits identity documents for two (2) affiants from whom he submitted affidavits as well as their telephone numbers, he has failed to submit evidence that establishes

that these affiants resided in the United States during the requisite period or that they were personally aware of the events and circumstances of his residence.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant has not submitted any contemporaneous evidence in support of his application. He has asserted that he worked for businesses that were not incorporated until long after he states he worked for them and has not offered any proof that these businesses were operational on the dates he states he worked for them. Further, the two (2) affidavits and one (1) letter he has submitted are not sufficient to meet this burden for the reasons stated above.

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 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 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.