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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 04 314 10373

Office: NEW YORK

Date: DEC 21 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.

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 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director relied on responses given by the applicant during his legalization interview, concluding that the applicant's statement that he did not recall the date of his unlawful entry was inconsistent with the letter from The American Society of Buddhist Studies, which referenced to the applicant's U.S. residence since December 1981. The director denied the application, finding that 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 disputes the director's finding regarding his responses at the legalization interview and reassures the AAO that The American Society of Buddhist Studies is a valid non-profit organization.

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). 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).

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. 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 period, 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 during the requisite time period. In the present matter, the applicant did not provide supporting evidence at the time he filed the Form I-687. Accordingly, the record shows that the director issued a notice of intent to deny on November 16, 2005. In response to the notice, the applicant provided the following documentation in support of his claimed residence:

1. An affidavit, dated December 5, 2005, from the secretary of the Oriental Cultural Association claiming that the applicant has been a member of the organization since April 1982. Although the affiant claimed that the organization has knowledge of the applicant's entry into the United States prior to January 1, 1982, she did not provide the specific month and year of entry; nor did she provide other verifiable information that would indicate the association's knowledge of facts and circumstances pertaining to the applicant's U.S. residence.
2. A letter dated December 1, 2005 from [REDACTED], an abbot at The American Society of Buddhist Studies, claiming that the applicant has been following Buddhist teachings since December 1981. The abbot did not state how he came to know this information about the applicant or how, if at all, this information relates to the applicant's entry and residence in the United States during the requisite statutory time period.
3. A letter dated November 28, 2005 from [REDACTED] the manager of [REDACTED] Mr. [REDACTED] stated that the applicant has been a club member since November [REDACTED].

1981. No other information was provided regarding the applicant's U.S. residence during the statutorily relevant time period.

4. Thirteen identical affidavits dated either December 7, 8, or 9, 2005. All thirteen affiants provided the city and state of the applicant's residences from August 1981 through the date of each respective affidavit. All affiants stated that they knew the applicant to have entered the United States prior to January 1, 1982 and to have resided in the United States continuously with the exception of brief departures. None of the affiants specified how they met the applicant, the frequency of each affiant's encounters with the applicant during the relevant time period, or any facts or circumstances specific to the applicant and his alleged U.S. residence during the requisite time period.
5. Contemporaneous documentation including two bank notices dated March 3 and 8, 1982, respectively, and the applicant's lab invoice dated March 19, 1982 for services rendered on February 26, 1982.

Subsequent to the applicant's interview with a Citizenship and Immigration Service's officer, another notice of intent was issued on April 3, 2006. In response, the applicant provided a letter dated April 19, 2006 from [REDACTED], an abbot at The American Society of Buddhist Studies reciting the history of the organization. The only evidence pertaining to the applicant is the abbot's claim that the applicant had attended this Buddhist temple since December 1981 and through 1988 and had participated in the organization's charity events. No verifiable information was conveyed in this document.

Accordingly, the director issued a final denial of the application on May 30, 2006, finding that the applicant failed to overcome the grounds cited in the NOID. The director advised the applicant that the affidavits provided appeared neither credible nor amenable to verification, and explained why the affidavits were deemed insufficient to meet the applicant's burden of proof.

On appeal, the applicant disputes the director's adverse comments regarding the applicant's interview response to the question of the applicant's date of U.S. entry. However, even if the AAO accepted the applicant's claim on appeal as fact, the record as presently constituted lacks sufficient documentation to establish the applicant's continuous residence in the United States during the statutory time period. As discussed above, the letters discussing the applicant's membership in various religious and cultural organizations lack any verifiable information including the applicant's address during his purported years of membership or any other information conveying the organization's knowledge of events and circumstances related to the applicant's U.S. residence during the statutory time period. Similarly, while the 13 affiants in No. 4 above provided the applicant's city and state of residence during the relevant time period, the applicant's exact address was not provided.

While the applicant has provided some contemporaneous evidence, as cited in No. 5 above, all of the evidence relates to a two-month time period in 1982. The applicant relies on deficient letters and affidavits to establish his unlawful residence during the remaining portion of the statutory time period.

In summary, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the majority of the 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*, 20 I&N Dec. 77. 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.