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**U.S. Citizenship
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FILE: [REDACTED]
MSC-05-187-12406

Office: CINCINNATI

Date: **JUL 17 2007**

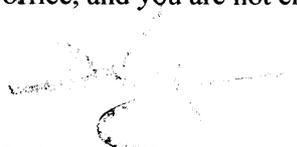
IN RE: Applicant: [REDACTED]

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, Cleveland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director indicated the applicant had not filed for membership in classes associated with the CSS, LULAC, or Zambrano legalization class action lawsuits. The director determined the applicant had not demonstrated that he was continuously present in the United States between January 1, 1982 and May 4, 1988. As a result, the director denied the application.

On appeal, the applicant attempted to explain apparent inconsistencies between his statements on the Form I-687 Application for Status as a Temporary Resident and his statements in the interview with an immigration officer by referencing a miscommunication and language difficulties.

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 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 Citizenship and Immigration Services (CIS) on April 5, 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 showed his residences in the United States during the statutory period to be at [REDACTED] Cincinnati, Ohio from 1980 to 1984; and [REDACTED], Cincinnati, Ohio from 1985 to 1999. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant indicated he was in Kenya at the following times during the statutory period: October 1984 to January 1985; May 1985 to June 1985; and June 1987 to August 1987. The only supporting documentation of his residence during the statutory period that the applicant submitted with his application was a lease application for the lease of the property at [REDACTED] for the period of August 20, 1983 to August 30, 1984. The applicant also included a letter from Africa Inland Church confirming the activities of an individual named [REDACTED]. No explanation was provided regarding the significance of this letter.

At his interview with a CIS officer on March 13, 2006, the applicant stated that he first entered the United States in July 1980. The applicant remained in the United States until 1984 living at [REDACTED], Cincinnati. He returned to Kenya until 1988, when he came to the United States again for one and one-half months for reasons related to his church. He returned to the United States in 1992 for two months for a church seminar. He returned to the United States in 1999 and has continued to live here since that time. The applicant has two children in Kenya. One child was born

January 16, 1986; and the other was born August 17, 1991. With the Form I-687 application, the applicant included documents that confirm relevant aspects of his account of his residency in the United States that he provided to the immigration officer. The applicant provided a copy of a B1/B2 visa issued on June 16, 1992 and expiring June 15, 1997; and an F-1 visa issued on July 8, 1999 and expiring July 7, 2004.

In denying the application the director indicated the applicant had not filed for class membership in classes associated with the CSS, LULAC, or Zambrano legalization class action lawsuits. It is noted that applicants may also demonstrate eligibility for relief pursuant to the CSS and LULAC settlement agreements by showing that they tendered completed applications and fees as required by the settlement agreements and their applications were rejected for filing for the reasons specified in the settlement agreements. It is also noted that the applicant indicated on Form I-687 Supplement – CSS/Newman (LULAC) Class Membership worksheet that he had brought a completed legalization application and fee to the Immigration and Naturalization Service or a Qualified Designated Entity during the legalization period. As a result, it is found that the applicant was appropriately treated as a CSS/Newman class member. In his decision, the director determined the applicant had not demonstrated that he was continuously present in the United States between January 1, 1982 and May 4, 1988. As a result, the director denied the application.

On appeal the applicant indicated there was miscommunication or he was misunderstood due to a language problem during his interview with an immigration officer. The record lacks evidence to support the applicant's continuous residence in the United States. The applicant failed to provide additional evidence on appeal and the explanation he provided is found to be insufficient to overcome this lack of evidence.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, other than a property lease relating to the period from August 20, 1983 to August 30, 1984. The applicant has also failed to submit any affidavits in support of his residency in the United States during the statutory period. Lastly, although the applicant indicated miscommunication occurred, the record of the interview with an immigration officer shows the applicant stated he was living in Kenya from 1984 to 1988.

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 fact that the applicant provided no supporting evidence of his entry into the United States prior to January 1, 1982 or his residence in the United States during 1982 and from 1985 to 1988, 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.