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**U.S. Citizenship
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FILE: [REDACTED]
MSC-05-248-10420

Office: NEW YORK

Date: JUN 06 2007

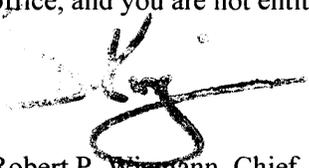
IN RE: Applicant: [REDACTED]

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:
[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.


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 determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant provides an additional affidavit and reasserts the availability of a prior affiant to confirm the applicant's presence in the United States.

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 applying 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 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.

An alien applying 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, 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 CIS on June 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 first address in the United States to be at [REDACTED] Bronx, New York, from September 1981 to August 1995. At part #33, the applicant showed his first employment in the United States to be as a self-employed caregiver in New York, New York from December 1981 to April 2003. The applicant did not specify any work locations for this time period. The applicant provided no supporting documentation of his employment in the United States. In fact, to attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, 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 the affidavit of [REDACTED] together with a copy of the biographical page of [REDACTED] United States passport. [REDACTED] affidavit was not dated. In this affidavit, [REDACTED] indicated that he met the applicant "in Bronx" on approximately June 12, 1981. There is nothing in the record to explain how the applicant and [REDACTED] could have met in the Bronx in June 1981 when the applicant indicated on his Form I-687 that he did not enter the United States until September 1981. The applicant also submitted the affidavit of [REDACTED] of Second Southern Baptist Church, in which [REDACTED] confirmed having known the applicant since 1981 "when he first came to New York, and church took him in" The applicant did not list Second Southern Baptist Church as a church with which he was affiliated, as requested under part #31 of Form I-687. Despite the provision of this additional evidence, the director found that

the applicant failed to submit documents constituting a preponderance of evidence supporting applicant's residence in the United States for the statutory period.

At his interview with a CIS officer on March 21, 2006, the applicant stated that he came to the United States in September 1981.

An additional Notice of Intent to Deny was issued to the applicant on March 21, 2006. This Notice specifically requested copies of all pages of all passports issued to the applicant. In addition, the Notice referred to the affidavits of [REDACTED] and [REDACTED]. The Notice indicated that [REDACTED] affidavit did not include a contact number for verification, and [REDACTED] affidavit did not include an identity document and evidence that [REDACTED] was in the United States during the statutory period. In response to this Notice, the applicant submitted copies of the pages of a passport issued to him in Ghana on June 17, 2005. This passport listed the applicant's occupation as "technician," although on Form I-687 the applicant did not mention ever having worked as a technician. A telephone number for [REDACTED] was handwritten as [REDACTED] on the original Notice, which was returned with the response as a cover sheet. The applicant also submitted an additional affidavit with his response to the Notice. In her affidavit, [REDACTED] attests to having met the applicant in February 1981 when the applicant was selling merchandise in New York. [REDACTED] did not indicate in her affidavit where she was living or working at the time she met the applicant. The applicant did not indicate on Form I-687 that he had ever worked as a merchant in New York. In addition, there is nothing in the record to explain how the applicant could have met [REDACTED] in February 1981 when the applicant testified, both at his interviews and on his Form I-687, to having first entered the United States in September 1991.

The CIS officer attempted to contact [REDACTED] at the number listed in the applicant's additional materials in order to verify [REDACTED] affidavit. After the Officer identified himself as an officer of the Department of Homeland Security, the individual who answered hung up the telephone. As a result, [REDACTED]'s affidavit was found not credible by the director.

In denying the application the director noted that the applicant provided no evidence of his entry from Canada, the attempt by the CIS officer to contact [REDACTED] and the limitations regarding the submitted affidavits. Specifically, the director noted that [REDACTED] affidavit did not contain an identity document or evidence the affiant was in the United States during the statutory period. The director also noted [REDACTED] affidavit does not contain evidence that [REDACTED] was in the United States during the statutory period. The director again found that the applicant failed to submit documents constituting a preponderance of evidence supporting applicant's residence for the statutory period.

On appeal the applicant did not attempt to explain the officer's difficulty in contacting [REDACTED]. The applicant merely indicated that [REDACTED] disputes the phone call by the officer, and provided the same contact number for [REDACTED] that was used by the officer. The applicant also provided an additional affidavit, in the form of a form letter, from [REDACTED]. In this affidavit, [REDACTED] failed to provide information about his own employment as requested in the affidavit form, and provided no dates for his past addresses as requested in the affidavit form. [REDACTED] also failed to provide specific addresses or dates of residence at each address for the applicant, as requested by the affidavit form. [REDACTED] also failed to indicate the date on which he and the applicant first became acquainted. The affiant merely indicated he and

the applicant met “in 1981 in the Bronx in New York City, at a Ghanain funeral celebration.” This affidavit is bereft of sufficient detail to support the applicant’s claim of residence since 1981.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail or conflict with the applicant’s testimony. Specifically, the affidavits from [REDACTED] and [REDACTED] conflict with the applicant’s testimony regarding the time he entered the United States. [REDACTED] affidavit also conflicts with information provided by the applicant regarding his occupations in the United States. In addition, [REDACTED] could not be reached to confirm his affidavit and the applicant provided no explanation for the officer’s inability to contact [REDACTED] at the number provided. Lastly, [REDACTED] affidavit is inconsistent with the applicant’s testimony in that the applicant did not indicate on his I-687 application that he was ever affiliated with [REDACTED] church. In addition, [REDACTED] affidavit lacks sufficient detail to support the applicant’s claim of residence. Specifically, [REDACTED] did not provide specific dates of residence or specific addresses at which the applicant resided during the relevant time period. [REDACTED] also provided insufficient detail regarding the date of his initial acquaintance with the applicant. The applicant also failed to provide any supporting documentation regarding his employment in the United States, despite having indicated that he was employed continuously from 1981 until 2005.

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 applicant’s I-687 application and supporting affidavits, and 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.