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**U.S. Citizenship  
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Services**

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FILE: [REDACTED]  
MSC 05 151 20821

Office: New York

Date: **NOV 20 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates his claim of residence in this country for the requisite period and submits a new affidavit in support this claim.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. *See* 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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 February 28, 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 [REDACTED] in New York, New York from 1982 to August 1986 and ‘ [REDACTED] ’ in New York, New York from August 1986 through at least the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

The fact that the applicant failed to list any residence in this country prior to 1982 at part #30 of the Form I-687 application seriously diminished his claim of continuous residence in the United States since prior to January 1, 1982. In addition, the applicant failed to include any documentation in support of his claim of continuous residence in this country for the requisite period.

On January 24, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit any evidence of continuous unlawful residence in the United States from prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted an affidavit that is signed by [REDACTED] indicated that he first met the applicant on an unspecified date in 1982 while the applicant was selling bags and watches on [REDACTED] in New York, New York. [REDACTED] stated that he and the applicant became friends because he would often buy goods from the applicant. [REDACTED] asserted that the applicant resided at [REDACTED] in New York, New York the date they initially met in 1982 through 1986. However, [REDACTED] failed to attest to the applicant's residence in this country both prior to 1982 and after 1986 through to the end of the original legalization application period on May 4, 1988..

The applicant provided his own statement in which he claimed that he began residing in the United States in 1981. However, as noted above, the applicant failed to list any residence in this country prior to 1982 at part #30 of the Form I-687 application. The applicant failed to provide any explanation as to why he did not list any residence in this country prior to 1982 if he truly began living in this country in 1981. In addition, the applicant failed to provide any explanation as to why he failed to include any evidence of his residence in the United States for the period in question with his Form I-687 application and only just submitted such evidence after having been informed of CIS's intent to deny his application.

The district director determined that the applicant failed to establish his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on July 6, 2006.

On appeal, the applicant submits a statement in which he reaffirms his claim of residence in this country since prior to January 1, 1982. The applicant contends that he did not list an address of residence in this country before 1982 because he did not obtain a permanent address in this country until such date. However, the applicant fails to provide the temporary address(es) where he resided in this country prior to obtaining a permanent address.

The applicant includes a new affidavit signed by [REDACTED] the same individual who previously provided an affidavit of residence with the applicant's response to the notice of intent to deny. [REDACTED] reiterates the assertion that he first met the applicant in 1982 and declares that he maintained a casual and friendly relationship with him thereafter. However, [REDACTED] fails to provide any specific and verifiable testimony relating to the applicant's residence in the United States after he and the applicant first met in 1982. Moreover, [REDACTED] fails to attest to the applicant's residence in this country since prior to January 1, 1982.

The lack of sufficiently detailed evidence that provides relevant and material testimony to corroborate the applicant's claim of continuous residence for the period in question 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. The applicant has failed to submit sufficient probative documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate his claim of residence, 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 as required under section 245A(a)(2) of the Act. 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.