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**U.S. Citizenship
and Immigration
Services**

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PUBLIC COPY

[Redacted]

FILE: [Redacted]
MSC-06-060-10166

Office: BOSTON, MA

Date:

NOV 28 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Boston, Massachusetts, and that decision 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. Specifically, the director noted in his decision that he found that documents submitted by the applicant in support of his application did not allow him to meet his burden of proving that he resided in the United States for the duration of the requisite period. 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 asserts that he has resided in the United States for more than twenty (20) years. He goes on to say that he is submitting a letter from the Asanteman Association, which he joined in 1986, in support of his application.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that they entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 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).

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 November 29, 2005. At part #30 of the Form I-687 where applicants were asked to list all residences in the United States since first entry, the applicant showed his address in the United States during the requisite period to be [REDACTED] in Worcester, Massachusetts where he indicates he lived from November 1981 until October of 1995. At part #33 of this application, where the applicant was asked to indicate all employment in the United States since January 1, 1982, he indicated that his first employment was as a caregiver. He shows that this employment began in October of 1985 and continued until the date he signed his Form I-687. It is noted here that the applicant would have been sixteen (16) years old as of October 1985. The applicant does not provide an address at which he has been employed in this capacity.

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 two (2) affidavits.

- The first affidavit is from [REDACTED] who states he resides in Bronx, New York. [REDACTED] states that the applicant lived at the address the applicant showed as his address of residence on his Form I-687 for the duration of the requisite period. However, the affiant failed to indicate how he met the applicant, where he met him or whether he personally knows that the applicant lived at this address of residence during the requisite period. He further failed to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during which he did not see the applicant. He did not provide evidence that he himself was present in the United States during the requisite period. Here, the affiant did not provide a phone number at which he could be contacted to verify information in the affidavit though he was asked to do so at part 6 of that affidavit. Though not required to do so, the affiant provided his certificate of naturalization as proof of his identity. It is noted that this certificate indicates that the affiant lived in Oklahoma in 1986 when he was naturalized. Because of its significant lack of detail, this affidavit can be afforded very minimal weight in proving that the applicant resided continuously in the United States for the duration of the requisite period.
- The second affidavit is from [REDACTED] who indicates that he lives in Bronx, New York. [REDACTED] states that the applicant lived at the address the applicant showed as his address of residence on his Form I-687 for the duration of the requisite period. However, the affiant failed to indicate how he met the applicant, where he met him or whether he personally knows that the applicant lived at this address of residence during the requisite period. He further failed to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during which he did not see the applicant. He did not provide evidence that he himself was present in the United States during the requisite period. Here, the affiant did not provide a phone number at which he could be contacted to verify information in the affidavit though he was asked to do so at part 6 of that affidavit. Though not required to do so, the affiant provided his certificate of naturalization as proof of his identity. It is noted that this certificate indicates

that the affiant lived in New York in 1996 when he was naturalized. Because of its significant lack of detail, this affidavit can be afforded very minimal weight in proving 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 in the United States since November 1981 when he was twelve (12) years old. The only evidence submitted with the application that is relevant to the 1981-88 period in question were two (2) affidavits. Both of these affidavits contain very little detail and do not establish how the affiants know the applicant or whether they were in the United States for the duration of the requisite period. Both affiants have not indicated that they have ever lived in Worcester, Massachusetts, which is where the applicant indicates he resided for the duration of the requisite period. Though the applicant was a twelve (12) year old juvenile at the time he entered the United States, he has not submitted any statements from an adult who was responsible for his care during the requisite period. He has also not submitted school records, immunization records, letters from employers or any other documentation other than the two (2) previously noted affidavits.

In denying the application the director noted the above, and stated that his office found that documents in the record were not sufficient to prove by a preponderance of the evidence that the applicant was eligible for adjustment of status to that of a Temporary Resident.

On appeal, the applicant furnishes a new letter from the Asanteman Association of the United States of America. This letter states that the applicant has been a member since January of 1986. Though this letter attests to the applicant's moral character, it does not pertain to the duration of the requisite period. Therefore, it cannot be afforded any weight in establishing either that the applicant entered the United States before January 1, 1982 or that he maintained continuous residence in the United States for the duration of the requisite period.

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). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) people with his Form I-687. He submitted additional evidence in an attempt to establish that he had maintained continuous residence in the United States upon appeal, but this evidence does not pertain to the duration of the requisite period.

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.