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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEWARK Date: **SEP 06 2007**  
MSC 05 217 10192

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

The district 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 district 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 claims that he first entered the United States in late 1981 using "someone else's name and travel document." The applicant submits an affidavit in support of his claim of continuous residence in the United States during the requisite period.

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. 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 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 May 5, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] New York, New York” from March 1981 to August 2002. At part #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Canada visiting friends from August 1987 to September 1987, from July to November 1998, and from May to August 2002. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he was working as a self-employed street mechanic from April 1981 to July 2002.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated April 22, 2005 from [REDACTED]. [REDACTED] attested that he had known of the applicant’s presence in the United States since the spring of 1981. [REDACTED] explained that he took his car for repairs to a location in Washington Heights,

New York, where a group of African street mechanics worked, and the applicant worked on his car that same day. He further stated, “[o]ver the years we had many personal and social encounters, both socially and in business.” However, [REDACTED] did not provide any relevant and verifiable testimony such as the applicant’s address in the United States during the requisite period.

On February 22, 2006, the applicant was issued a notice requesting additional evidence to establish his residence in the United States during the requisite period. The applicant, in response, submitted documents dated after the requisite period and a personal affidavit in which he stated, “I came to the United States for the first time through JFK, New York, NY, on March, 1981. I was not inspected upon entry. Since arriving in the United States, I have never left the United States . . . . The person who’s [sic] document I used retrieved it from me soon after we entered the United States.”

The applicant’s statement that he has never left the United States since arriving in this country contradicts his statement on the Form I-687 that he was outside the United States visiting friends in Canada from August to September 1987, from July 1998 to November 1998, and from May to August 2002. The applicant has not provided any explanation for this contradiction regarding his absences outside the United States.

On appeal the applicant states that he first entered the United States illegally in late 1981. He explains, “I used someone else’s name and travel document.” All international air passengers arriving at John F. Kennedy Airport, Jamaica, New York, are required to pass through United States Immigration and Customs inspection. The only possible reason an alien would use another person’s name and passport upon arrival at J.F.K. International Airport is to gain admission into the United States at the time of immigration inspection by fraudulently posing as another person. Such a person is called an impostor. The applicant’s previous claim that he entered the United States without inspection at J.F.K. International Airport is not credible. Furthermore, it contradicts his claim that he used another person’s name and passport to gain admission to the United States. This contradiction raises serious questions regarding the applicant’s claimed date and manner of entry into the United States.

The applicant submits an affidavit from [REDACTED]. [REDACTED] attests that he has knowledge of the applicant’s presence in the United States in late 1981. [REDACTED] states that the applicant came to this country as a member of a musical group that was touring the United States, but the applicant did not return to his country after his group’s tour ended. He further states that the applicant “continued to maintain contact with me from 1981 until now.”

It is curious that the applicant did not mention the fact that he purportedly arrived in the United States as part of a touring musical group and overstayed his authorized stay in his personal affidavit or on appeal. If the applicant was coming to the United States in 1981 as part of a touring musical group as stated by [REDACTED], he would have had no need to use another person’s name and passport to gain admission to the United States. He would have been issued a valid nonimmigrant visa as a member of the touring group by a United States embassy or

consulate in his country. [REDACTED] statement represents yet another contradiction in the applicant's claimed date and manner of entry into the United States.

Furthermore, [REDACTED] failed to provide any relevant and specific verifiable testimony such as the applicant's address in the United States during the requisite period to corroborate the applicant's claim. Therefore, this affidavit will be given little evidentiary weight.

The contradictions and discrepancies noted above raise serious questions regarding the credibility of the applicant's claim of continuous residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 attestations from only two people concerning that period, both of which lack sufficient verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed 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 applicant's contradictory statements and his 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.