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**U.S. Citizenship
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Services**

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[REDACTED]

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FILE:

MSC-05-249-13809

Office: NEW YORK

Date:

SEP 14 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 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. In her Notice of Intent to Deny (NOID), the director stated she found that the applicant submitted affidavits that were insufficiently detailed to establish, by a preponderance of the evidence, that the applicant maintained continuous residence in the United States during the requisite period. The applicant was then granted thirty (30) days within which to submit additional evidence in support of his application. In denying the applicant's Form I-687 application, the director stated that the additional evidence submitted in response to her NOID did not overcome the reasons for her denial as stated in her NOID. 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 feels due weight was not accorded to the affidavits he submitted in support of his claim of maintaining 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she 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 June 6, 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 address during the requisite period to be [REDACTED] in Bronx, New York from September of 1981 until August of 1989. At part #31 where the applicant was asked to list any associations or churches of which he was a member, he did not show that he was a member of any associations or churches. At part #32, where the applicant was asked to list all absences from the United States from January 1, 1982 until the time he signed his application, he indicated he had been absent from the United States on one occasion during the requisite period, from October to November of 1987. At part #33, where the applicant was asked the list all places of employment since January 1, 1982 he showed his employment for the duration of the requisite period to be as a self-employed vendor from November 1981 until December of 1989.

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. 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 three (3) affidavits. It is noted that the applicant also submitted photocopies of a passport. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because his passport verifies entries into and out of the United States subsequent to the requisite time period, it is not relevant evidence for this proceeding and therefore it is not detailed here.

The applicant submitted in support of his application the following affidavits:

- An affidavit from [REDACTED] that was signed and notarized on December 4, 2005. In this affidavit, the affiant provides his address and states that he met the applicant at a party of a family friend in July of 1981. He provides details of that party and goes on to say that two weeks after the party he went into New York City to look for a job with the applicant. He further states that he and the applicant found jobs at a company named Dial Temp Cooling Corporation as helpers in 1981 where they worked for one year. The affiant states that after that year he moved to Alexandria Virginia. It is noted that the applicant indicated on his Form I-687 that he was employed as a self employed vendor from November of 1981 until December of 1989. Therefore, affiant's claim that the applicant worked for Dial Temp Cooling Corporation during that time is not consistent with what the applicant showed on his Form I-687. This casts doubt on statements made in both this affidavit and on the applicant's Form I-687 regarding the nature of the applicant's employment during the requisite period. Further, this affiant states that he moved to Virginia in 1982 and he does not claim that he maintained regular, ongoing contact with the applicant after that time. Because information in this affidavit conflicts with what the applicant showed as his employment on his Form I-687 and because this affiant did not establish that he maintained regular ongoing contact with the applicant for the duration of the requisite period, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that was signed and notarized on December 4, 2005. In this affidavit, the affiant provides his or her address and states that the affiant met the applicant at his or her house in June of 1981. The affiant goes on to say that he or she began calling the applicant since the time they met. The affiant fails to establish the frequency of these phone calls. The affiant further fails to establish that he or she maintained continuous residence in the United States for the duration of the requisite period. This affidavit is found significantly lacking in detail to establish that the applicant maintained continuous residence in the United States for the

duration of the requisite period and therefore very minimal weight can be accorded to this affidavit.

- An affidavit from [REDACTED] that was signed and notarized but is not dated. This affidavit was submitted as additional evidence in response to the director's NOID. In this affidavit the affiant states that he met the applicant at his church in August of 1981. The affiant further indicated that the applicant was a member of his church and a good family friend. It is noted that on part #32 of the applicant's Form I-687 where he was asked to list all churches and other organizations of which he was a member, he did not indicate that he was a member of a church. The affiant fails to provide the name of this church or indicate frequency with which the applicant attended services there. Further, the affiant does not establish that he himself was continuously present in the United States for the duration of the requisite period. Because information in this affidavit is not consistent with what the applicant showed on his Form I-687 regarding church membership, and because this affiant neither established that he was continuously present in the United States or that he maintained regular ongoing contact with the applicant for the duration of the requisite period, very minimal weight can be given to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, supra.

In the previously mentioned affidavits, two of the affiants provided information regarding the applicant that was either inconsistent with or conflicted with what he showed on his Form I-687, casting doubt on the credibility of both those affidavits and on whether information provided by the applicant on his Form I-687 was complete and correct.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In denying the application the director noted the above, and stated that the applicant had failed to establish, by a preponderance of the evidence that he had maintained continuous residence in the United States during the requisite period.

On appeal the applicant states that the director did not give adequate weight to the affidavits submitted by the applicant as evidence that he maintained continuous residence in the United States for the duration of the requisite period. The applicant did not submit additional evidence with his Form I-694 Notice of Appeal.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

Here, however, as was previously noted, the three affidavits submitted by the applicant were significantly lacking in detail, did not establish that the affiants were in the United States for the duration of the requisite period and contained information that was not consistent with what the applicant showed on his Form I-687. As no additional evidence was submitted with the applicant's appeal, it is found that he has not established, by a preponderance of the evidence, that he maintained continuous residence in the United States for the duration of the requisite period.

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 three people concerning that period. He did not submit any additional evidence to establish that he maintained continuous residence in the United States.

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 that the affidavits submitted by the applicant contradicted information provided by the applicant on his Form I-687 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.