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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] MSC 05 243 11307

Office: CHICAGO

Date: **SEP 19 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, Chicago, Illinois, 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, counsel for the applicant asserts that the director erred in denying the applicant's application for temporary resident status and submits an appellate brief in support of his argument.

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.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

1. Photocopied envelopes addressed to the applicant and date stamped December 15, 1981, June 21, 1982, November 15, 1982, June 8, 1983, December 5, 1983, January 17, 1984, October 11, 1985, and January 13, 1987.
2. A photocopied postcard from Clearwater, Florida date stamped June 11, 1982. The portion of the post card identifying the addressee is not included. As such, it is unclear how or whether this document applies to the applicant's residence.
3. Two identical affidavits from [REDACTED]. One affidavit is dated July 28, 2003 and is notarized by [REDACTED] while the other affidavit is dated June 2, 2006 and is notarized by [REDACTED]. The affiant stated that he has known the applicant since October 1981 and claims to have met the applicant through a friend. The affiant recalled that he saw the applicant once or twice per week and stated that the applicant worked in a fast food restaurant when he first came to know him. The affiant further stated that the applicant moved to [REDACTED]. The affiant also stated that the applicant moved in with him when the affiant moved to [REDACTED] in May 1984. The affiant claimed that the applicant resided at that address for approximately four years.

4. Two identical affidavits from [REDACTED]. The first affidavit was signed on August 3, 2003 and was notarized by [REDACTED] while the second affidavit was signed on June 2, 2006 and was notarized by [REDACTED]. [REDACTED] stated that she first met the applicant in September 1982 during his employment at [REDACTED]. The affiant claimed to have been a patron of [REDACTED] during the applicant's employment and became friendly with the applicant when he returned money lost by the affiant during a visit to the fast food establishment. Although the affiant claimed that the applicant became a friend of the family, she provided no further verifiable information about the applicant's employment or residence since her initial encounter with the applicant in 1982.
5. A photocopy of an assignment of a lease wherein the applicant is named as the assignee and [REDACTED] is named as the tenant/assignor. The sublease was for a one-room residence at [REDACTED] floor and was for a one-year lease term from April 1, 1983 to March 31, 1984. The document is signed by the claimed owner of the subleased premises showing the owner's consent to the assignment of the lease.
6. An affidavit from [REDACTED] dated August 2, 2003. The affiant stated that he met the applicant in 1984 through a friend who used to be the applicant's roommate. Although the affiant discussed the applicant's marriage in 1995 and vouched for the applicant's good character, he provided no information that can be verified with other evidence and information submitted by the applicant.
7. A photocopy of an assignment of a lease wherein the applicant is named as the assignee and [REDACTED] is named as the tenant/assignor. The sublease was for a one-year term from May 1, 1987 to April 30, 1988 at [REDACTED]. It is noted that while the assignment form is identical to the one discussed in No. 5 above, this document, unlike the sublease in No. 5 above, lacks the signature of the owner consenting to the sublease of the named premises. As such, the validity of the document is questionable at best.
8. Affidavit from [REDACTED] dated July 27, 1990. The affiant attested to the applicant's departure from the United States in August 1987 and his return to the United States in September 1987.
9. An invoice from [REDACTED] dated September 3, 1988. There is no evidence that this receipt in any way pertains to the applicant.
10. A matchbox for [REDACTED] which states that the restaurant opened in the fall of 1986. Again, there is no explanation as to how this matchbox addresses the subject of the applicant's residence in the United States during the relevant statutory period.

After a thorough review of the documentation submitted, the AAO concludes that various deficiencies exist. First, the postcard, the jewelry store invoice, and the matchbox are in no way indicative of the

applicant's residence in the United States during the dates on any of the three respective documents. Second, while the affidavit from [REDACTED] established her initial encounter with the applicant, she provided no further information that can be verified with information provided by the applicant regarding his residence in the United States prior or subsequent to their initial meeting.

Third, while the applicant provided a photocopied envelope date stamped January 1984, which was addressed to the applicant at [REDACTED], according to information provided in the Form I-687, the applicant did not begin residing at that address until May 1984, which is four months after the post date on the envelope. It is noted that the lease assignment discussed in No. 5 above also indicates that the applicant was not residing at [REDACTED] in January 1984. This inconsistency causes the AAO to question the credibility and reliability of the documentation pertaining to the applicant's residence during a portion of the relevant time period. Specifically, if the envelope in question is authentic, then the information provided by the applicant on his Form I-687 as well as the validity of the sublease (No. 5 above) comes into question. Conversely, if the sublease is valid and the information provided by the applicant in the Form I-687 is truthful, the AAO must nevertheless question the applicant's credibility, as the authenticity of the envelope containing the incorrect mailing address then comes into question. 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). In the present matter, the inconsistency discussed herein has neither been acknowledged nor rectified.

Lastly, contrary to the claim of the affiant in No. 3 above, who stated that the applicant maintained his residence at [REDACTED] until 1988, the applicant indicated in his Form I-687 application that he maintained his residence at that address until 1989.

On appeal, counsel asserts that the application was erroneously denied and that such denial was contrary to Citizenship and Immigration Services' policy regarding reliance on affidavits as proof of residence of the person in question. Contrary to counsel's assertions, however, the affidavits in the present matter are insufficient, as some provide little or no verifiable information regarding the applicant's residence, while others, as specifically discussed above, are not entirely consistent either with information provided by the applicant in the Form I-687 or with other documentation submitted by the applicant to support his 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 above described deficiencies and the applicant's reliance upon affidavits with minimal probative value, it is concluded that the applicant 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.