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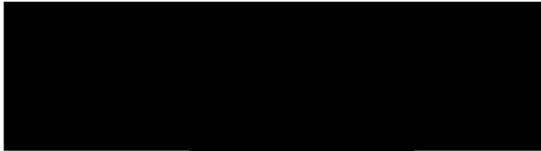
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
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Services**

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SEP 27 2007

FILE: [REDACTED] Office: NEW YORK Date:
MSC 06 089 12318

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 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, New York, New York, 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, the applicant disputes the director's conclusion and submits a statement dated June 21, 2006 in which he reviews the list of documents he has submitted thus far in support of his claimed period of unlawful residence in the United States.

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 Act, 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the Act has the burden to establish 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...and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.2(d). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. See *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Although Service regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant documents. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence since 1978 as claimed, the applicant has furnished the following evidence:

- (1) An unsigned rental agreement showing a lease that commenced on October 1, 1981 for [REDACTED]. The lease named the applicant as one of the three residents of the stated address.
- (2) Rental receipts for the above named residence listing the applicant as one of the residents. Rental receipts were submitted for the following months: October through December 1981, and for January through March of 1982 through 1986.

- (3) Rental receipts for [REDACTED] California listing the applicant as one of the residents. Rental receipts were submitted for January through March 1987 and 1988.
- (4) Rental receipts for [REDACTED] for January through March 1989 and January and February 1990. All, with the exception of the rental receipt for February 1989, list the beneficiary as one of the tenants.
- (5) A notarized affidavit dated March 1, 1990 from [REDACTED] a photographer who claimed to have employed and to have known the applicant since prior to 1981.
- (6) Receipts for income purportedly paid to the applicant by [REDACTED] in Hollywood, California. The receipts account for the pay period that reflects the applicant's pay for the first two weeks of January from 1981 through 1989.
- (7) Notarized affidavit of [REDACTED] who claimed to have first met the applicant during the applicant's visit to New York in 1981.
- (8) Notarized affidavit from Reverend [REDACTED] claiming to have been acquainted with the applicant since 1978 due to the applicant's affiliation with the reverend's church. The affiant listed the addresses of the applicant's three residences from October 1981 through March 6, 1990, the date the affidavit was signed.

On April 6, 2006, the director issued a notice of intent to deny (NOID), stating that the applicant has failed to submit sufficient documentation in support of his claim of residence. The director subsequently determined that the applicant failed to respond to the NOID and, therefore, issued a final notice of denial dated June 5, 2006. The director also issued findings as to the applicant's failure to submit credible evidence to support his claim. While the AAO concurs with the overall conclusion with regard to the insufficiency of the evidence submitted, it shall be noted that, contrary to the director's observation, the applicant did in fact submit a response to the NOID. Specifically, the applicant provided a response dated April 28, 2006 in which he indicated that he was submitting the following two additional affidavits:

- (1) A sworn, notarized affidavit from [REDACTED] dated April 27, 2006 in which the affiant claimed that he came to the United States in July 1981 and lived in Hollywood, California. He claimed that he moved to New York in August 1987. He further stated that he first met the applicant in September 1981 in Hollywood, California during a social gathering. He noted that he remained friends with the applicant after the affiant's move to New York in 1987.

- (2) A notarized statement from [REDACTED] dated April 25, 2006. [REDACTED] stated that he has known the applicant since March 1981 and claimed to have met him in a restaurant in Jackson Heights, whose street address and zip code were not provided. [REDACTED] further stated that the applicant owns a newspaper stand in Jamaica, New York.

Nevertheless, the director properly concluded that the applicant failed to establish eligibility for the immigration benefit sought.

On appeal, the applicant provided a statement dated June 21, 2006 in which he resubmitted a portion of the list of documents previously submitted in support of the Form I-687 application. The applicant also provided two postal envelopes addressed to him; one containing a posted date sometime in 1981 and another dated stamped April 21, 1980. Both envelopes showed the applicant's address at the time to be [REDACTED], [REDACTED] which matches the information provided in No. 30 of the Form I-687. Notwithstanding the applicant's submission of this contemporaneous evidence, the AAO finds various other documents submitted in support of the applicant's claim to be deficient and lacking in probative value for reasons discussed below.

First, while the affiant, whose affidavit is discussed in No. 7 above, discussed the date and place of his initial encounter with the applicant, the applicant claims to have resided in the State of California from 1981 through 1990. The affiant did not explain how he was aware of the applicant's continuous residence in the United States during the entire statutory time period if he resided in the State of New York while the applicant himself was purportedly a resident of California until April 1990. Furthermore, the affiant provided no verifiable information about the applicant's purported U.S. residence, such as the applicant's residential addresses or other information about any encounters or contact he may have had with the applicant during the relevant time period. The affiant's statement addresses a single encounter with the applicant prior to the relevant statutory time period.

Second, the statements made by [REDACTED]-whose affidavit was submitted in response to the NOID, lack verifiable, relevant information. Much like the affiant previously discussed, [REDACTED] focused on a single encounter with the applicant that predates the relevant statutory period by approximately nine months. Mr. [REDACTED] failed to explain whether he maintained contact with the applicant, keeping in mind that the applicant resided in California while the affiant resided in New York. The affiant also provided no information to explain how, given the distance between his residence and that of the applicant, the affiant was able to maintain knowledge of the applicant's purported residence in the United States during the statutorily relevant time period.

Third, while [REDACTED] whose affidavit was also submitted in response to the NOID, was better able to establish a basis for his knowledge of the applicant's U.S. residence, the affiant failed to provide verifiable information concerning the applicant during the relevant time period. Moreover, this affiant claimed that he often met with the applicant at a mosque and at other religious activities. However, this information suggests that the applicant was affiliated with a religious organization, which is in direct conflict with No. 31 of the Form I-687, where the applicant indicated that he had no affiliations with any religious organizations. This

statement also conflicts with the statements of the affiant discussed in No. 8 above, who claimed that the applicant was a member of his church since 1978. That being said, the affidavit discussed in No. 8 above is deficient in its own right. Namely, the affiant claimed to know the applicant because of the applicant's membership in the affiant's church since 1978. However, as with [REDACTED] statements, this affiant's claim is also in direct conflict with No. 31 of the Form I-687 application where the applicant indicated that he had not affiliations with any religious organizations. Additionally, while the affiant listed the applicant's residential addresses since 1981, he did not provide similar information prior to that time period even though he claimed that his acquaintance with the applicant went as far back as 1978.

Fourth, with regard to the employment letter discussed in No. 5 above, 8 C.F.R. § 245a.2(3)(i) contains the following list or requirements for letters verifying an applicant's employment: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, [REDACTED] who attested to the applicant's employment from 1981 to 1990, stated that he did not have reliable records for "these types of employees" and asserted that the information provided was primarily based on the affiant's memory. The affiant also failed to provide any of the applicant's addresses during the purported period of employment. Therefore, the employment affidavit provided is deficient, as it fails to comport with the regulatory requirements specified above.

Lastly, with regard to the contemporaneous documentation provided, further deficiencies exist. Namely, while the applicant provided the first page of a residential lease, purportedly for one of the residences identified in No. 30 of the Form I-687, the applicant failed to provide a signature page showing that the lease was actually executed and in effect for the claimed time period. Furthermore, the rent receipts that purportedly establish rent paid for the first three months of the lease term are also unreliable, as they show that \$145 was paid for the leased premises. This information is inconsistent with the lease itself, which indicates that rent for the leased premises was in the amount of \$150. Particular focus is drawn to the rent receipt dated November 1, 1981, which indicates that it covers the one-month time period of "November to October" of 1981. The signature on these rent receipts is also unclear, thereby giving rise to questions regarding whether or not the signature is that of a person who was authorized and affiliated with the lessee of the leased premises.

In summary, given the absence of reliable contemporaneous documentation and the applicant's reliance on affidavits which do not meet basic standards of probative value, it is concluded that the applicant has failed to establish, by a preponderance of evidence, continuous residence for the required period.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.