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**U.S. Citizenship
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FILE: [REDACTED]
MSC-05-216-21021

Office: BOSTON, MA

Date:

APR 30 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that testimony given to a Citizenship and Immigration Services (CIS) officer at the time of his interview pursuant to his Form I-687 application and evidence submitted by the applicant in support of that application did not carry sufficient weight to prove by a preponderance of the evidence that he resided in the United States for the requisite periods. In saying this, the director noted that the testimony given by the applicant regarding his addresses of residences did not appear credible and that the affidavits he submitted in support of his application lacked probative value. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director erred in making his decision. He states that the director failed to give due weight to the evidence he submitted in support of his application. He did not submit additional evidence in support of his application with his appeal.

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). The applicant must also 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). The regulations clarify that the applicant must 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 physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 4, 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 addresses in the United States during the requisite period to be: [REDACTED] in New York City from December 1981 until March 1985; and [REDACTED] in Woonsocket, Rhode Island from April 1985 until March 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he has been

self employed as a vendor and doing maintenance from February 1982 until the date he submitted his Form I-687 to CIS. It is noted that he did not indicate an address or an employer associated with this employment.

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 that he maintained continuous unlawful residence in this country since prior to January 1, 1982, and then for the duration of the requisite period, the applicant submitted the following:

- An affidavit from [REDACTED] that was notarized and is dated December 4, 2005. In this affidavit, the affiant states that she has known the applicant since 1985. She goes on to state that she is a good friend of the applicant's. Though she is not required to do so, she provides a photocopy of her Massachusetts Identification Card as proof of her identity. Here, though the affiant states that she has known the applicant since 1985, she does not state that she personally knows that he resided in the United States at that time. She has not submitted proof that she herself resided in the United States from 1985 until the end of the requisite period. She does not indicate whether she saw the applicant in the United States, nor does she state the frequency with which she saw the applicant or whether there were periods of time during the requisite period during which she did not see him. Because this affidavit is significantly lacking in detail, it can be accorded only very minimal weight in establishing that the applicant was present in the United States since 1985. As this affiant did not meet the applicant until 1985, this affidavit carries no weight in establishing that the applicant entered the United States on a date prior to January 1, 1982.
- An affidavit from [REDACTED] that was notarized on January 17, 2005. Though she was not required to do so, the affiant submits a photocopy of her Massachusetts Identification Card with her affidavit as proof of her identity. In her affidavit, the affiant states that she met the applicant in August 1981. She states that she met him when she went to New York and visited a friend in Harlem. She states that the applicant visited her many times in Boston. She states that she took the applicant to apply for legalization in 1987, but an immigration officer informed her that he could not do so because this affiant was not the

applicant's legal guardian. It is noted here that the applicant was born in 1965. Therefore, he would have been twenty-two (22) years old in 1987. It is unclear why the applicant, who was not a minor at the time, would have needed a legal guardian to help him to apply for legalization. Here, though the affiant states that the applicant visited her in the United States, she fails to indicate the frequency with which the applicant visited her. She does not indicate dates associated with these visits. Therefore, it is not clear that he visited her during the requisite period. She further fails to indicate whether she personally knows if the applicant was residing in the United States when she met him. She fails to identify an address at which she personally knows that the applicant resided or to state whether there were periods of time during the requisite period when she did not see the applicant. Because of its significant lack of detail, this affidavit carries only very minimal weight in proving that the applicant was present in the United States during the requisite period.

- An affidavit from [REDACTED] that is dated March 21, 2005 and is notarized. In his affidavit, the affiant states that he has known the applicant since 1987. However, here, he fails to indicate where he met the applicant or whether he first met him in the United States. Though he attests to the applicant's character, the affiant does not indicate an address at which he personally knew the applicant resided during the requisite period. The affiant failed to submit proof that he himself resided in the United States during the requisite period. He did not indicate the frequency with which he saw the applicant in the United States during the requisite period. Because of the significant lack of detail in this affidavit, it can only be accorded very minimal weight as proof that the applicant was present in the United States during the requisite period. Because this affiant did not meet the applicant until 1987, this affidavit carries no weight as proof that the applicant entered the United States before January 1, 1982.
- An affidavit from [REDACTED] that is dated March 15, 2005. Here, the affiant states that he has known the applicant since 1985 in Rhode Island. He states that the applicant's family lived next door to his family. He states that he played soccer with the applicant. However, here, he fails to indicate whether he played soccer with him in the United States or to indicate the years during which they played together. He does not indicate an address at which it is personally known to him that the applicant resided in the United States, nor does he submit proof that he himself resided at an address in the United States during the requisite period. He fails to indicate the frequency with which he saw the applicant during the requisite period. Because of its significant lack of detail, this affidavit carries only very minimal weight as proof that the applicant resided in the United States for part of the requisite period. Because the affiant did not meet the applicant until 1985, it carries no weight in establishing that the applicant entered the United States on a date prior to January 1, 1982.
- An affidavit from [REDACTED] that is notarized and is dated March 11, 2005. Here the affiant states that he grew up in the same neighborhood as the applicant in the Ivory Coast and became close friends with him in 1981. He states that he has kept in touch

with the applicant since that time. Here, the affiant does not indicate whether he became close friends with the applicant in the Ivory Coast or in the United States. He fails to submit proof that he himself resided in the United States during part or all of the requisite period. He does not state that it is personally known to him that the applicant resided in the United States during the requisite period. Because this affiant does not state that he knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight in proving that he did so.

It is noted that the applicant also submitted a pay stub from _____ from 2005, a judgment from the State of Rhode Island Family Court from 2004, an affidavit from _____, who met the applicant in September, 1999, and a photocopy of a page of his passport issued to him in 1994. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents do not verify the applicant's residence in the United States during the requisite period they are not relevant evidence for this proceeding.

The director issued a Notice of Intent to Deny (NOID) to the applicant on January 27, 2006. In his NOID, the director noted that the applicant's testimony regarding his addresses both during and after the requisite period was not credible. In saying this, the director noted that though the applicant stated that he lived in a 20 story building in New York, when the director viewed satellite photo images of the building, it did not appear to be a 20 story building. The director went on to say that though the applicant claimed to have lived at an address in Woonsocket, Rhode Island and provided an affidavit from _____ who claimed he was the applicant's neighbor, the Service obtained information that _____ has never lived in Woonsocket. The director also noted that the applicant did not know the names of any of his neighbors there or that there was a sizable park near the address he claimed to have lived at for nine years. The director also noted that though the applicant claimed to have first returned to the Ivory Coast in April of 1998, he had a child born in the Ivory Coast in 1996. The director afforded the applicant thirty (30) days within which to submit additional evidence in support of his application. As the director found that the applicant did not respond to the director's NOID, he did not overcome his reasons for denial as stated in that NOID. Therefore, the director denied the application on March 2, 2006.

It is noted here that the record does contain a letter from the applicant dated February 24, 2006. In this letter, the applicant responded to the director's NOID. He states in this letter that he misspoke regarding the size of the building in which he resided in New York. He states that it contained 20 apartments rather than 20 floors. He goes on to say that _____ from whom the applicant submitted an affidavit did not live next door to the applicant. Rather, he states, his family lived next door to _____'s family.

He states that he did not know the names of his landlord or his neighbor at the address at which he claimed to live for nine years because he was living illegally in the United States. He states

that he cannot see a park from his address of residence and that is why he did not know that there was a park located near that property.

He goes on to say that the reason why he has a son born in the Ivory Coast in 1996 when he claims he did not return to the Ivory Coast until 1998 is that he met his son's mother in January 1996 when she was in New York. However, his son's mother then returned to the Ivory Coast where she gave birth. Though not noted by the director, it is noted here that the applicant submitted a copy of his passport. This passport was issued to the applicant on October 1, 1994. The passport was stamped by a local Ivorian Police Department at the time it was issued, indicating that the applicant was present in the Ivory Coast at the time this passport was issued to him in 1994.

The applicant states that he has no other evidence than what he has submitted that proves that he lived in the United States because he was residing in the United States illegally.

The director responded to a previous Form I-694 that was received April 3, 2006 by reconsidering the applicant's previously submitted response to the director's NOID. Here, the director granted the applicant's motion to reconsider, but found that the applicant still failed to meet his burden of proof. Specifically, the director found that the applicant's explanations regarding the inconsistencies within his testimony and submitted evidence were not credible and that all of the evidence, including the applicant's statement in response to the director's NOID, when considered as a whole, did not allow the applicant to meet his burden of establishing that it was more likely than not that he entered the United States on a date prior to January 1, 1982 and then resided continuously in the United States for the duration of the requisite period. Therefore, because the director found the applicant did not meet his burden of proof, the director issued a new notice of denial on September 29, 2006.

On appeal, the applicant asserts that the director erred in his decision by not according sufficient weight to evidence that he submitted in support of his application. However, as was previously noted, after considering the evidence in the record, the AAO agrees that the applicant has not proven that it is more likely than not that he entered the United States prior to January 1, 1982 and then resided continuously in the United States in an unlawful manner for the duration of the requisite periods. The affidavits submitted by the applicant are lacking in detail. No affiant has submitted proof that he or she resided in the United States during the requisite period. None stated the frequency with which they saw the applicant during the requisite period. Further, the explanations for the inconsistencies identified by the director cannot overcome those inconsistencies. The applicant has submitted an affidavit in which the affiant, Joyce Smith, claims that the applicant was turned away by an immigration official during the original filing period because she was not his legal guardian. As the applicant was 22 years old in 1987 he would not have needed a legal guardian to apply for legalization. Further, class members, as defined by the CSS and Newman Settlement Agreements, are those who are otherwise eligible for legalization who were either turned away by either the Service or by a Qualified Designated Entity (QDE) because either an immigration officer or a QDE determined that the applicant had

traveled outside the United States after November 6, 1986 without advanced parole. CSS Settlement Agreement paragraph 1 at page 3; Newman Settlement Agreement paragraph 1 at page 3. Here, the applicant claims he was turned away by the Service when he tried to apply for legalization at the age of 22 because he did not have a legal guardian.

Furthermore, though not identified by the director, the existence of a passport issued to the applicant in the Ivory Coast in 1994 when the applicant claims not to have been absent from the United States at any point in time from 1981 until 1998 calls into question whether the applicant has completely and accurately represented his absences from the United States both during and after the requisite period.

In summary, the applicant has not provided sufficient evidence to prove by a preponderance of the evidence that he continuously resided in the United States for the duration of the requisite period. The statements and affidavits submitted by the applicant lack credibility and probative value for the reasons noted. Moreover, the record shows that the applicant has contradicted the assertions made in those statements by previously stating that he had no absences from the United States from 1981 until 1998 when he has submitted a passport that was issued to him in the Ivory Coast in 1994.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.