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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-054 10087

Office: NEW YORK

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, New York. 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. 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 he has submitted attestations that are credible and reliable, and that he has met the requirements of continuous physical presence and continuous residence.

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).

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. See 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 Supplement to Citizenship and Immigration Services (CIS) on November 23, 2004. 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 listed his first address in the United States to be [REDACTED] Brooklyn, New York, from October of 1981 to June of 1987; and [REDACTED] Brooklyn, New York, from December of 1987 to December of 1992. Similarly, at part #33, he listed his first employment in the United States self-employment performing odd jobs for different construction companies on a daily basis from December of 1981 to November of 2004.

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

- An affidavit from [REDACTED] Home Improvements in which he stated that the company employed the applicant as a part-time construction painter from December of 1982 to December of 1988. The affiant also stated that the applicant was paid in cash due to his lack of legal documentation. The attestation does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the declarant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not

conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that the applicant is his close friend and that he entered the United States before January 1, 1982. The affiant fails to specify how or where he met the applicant. He fails to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. The attestation lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] of Z.A.D. Company in which he stated that he has known the applicant since 1981, that the applicant would visit him from time to time, and that he would work for him sometimes. The affiant does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the time period during which the applicant was employed by the company, nor does he specify the address(es) where the applicant resided throughout the claimed employment period. The affiant does not indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of tax records, personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] of Bangladesh Society Inc., New York in which he stated that the applicant has been a member of the organization since 1982, and that the applicant entered the United States before January 1, 1982 and has been residing in the country continuously, except for a brief absence. This information is inconsistent with the information provided by the applicant on his 2004 Form I-687 application, part #31 where he did not list any affiliations or associations with any churches, clubs, or organizations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made by the declarant. 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. Because this affidavit is inconsistent with statements made by the applicant and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since September of 1981 and that he met the applicant at a restaurant in Jackson Heights, New York where the applicant worked as a busboy with [REDACTED]. The affiant further stated that since meeting in September of 1981, he and the applicant have communicated with one another over the telephone. The affiant lists six addresses in the United States for the applicant and states that the information is based upon his personal knowledge of the applicant's residence. This information is inconsistent with the applicant's sworn testimony given by him to an immigration officer during his interview on July 31, 2006, in which he stated that he first entered the United States on October 16, 1981. The applicant repeated this statement in a notarized affidavit dated November 16, 2004. **There has been no** explanation given for this inconsistency. Because this declaration contains testimony that conflicts with what the applicant sworn to under oath, doubt is cast on assertions made by the affiant. 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 petition.

In a Notice of Intent to Deny (NOID) dated March 8, 2006, the director requested the applicant submit additional evidence to establish his claimed residence in the United States and noted that the affidavits that had been submitted were not credible, amenable to verification, or contained employment dates that were subsequent to the statutory date.

In response to the NOID, the applicant stated that he has submitted credible attestations that were not influenced by him, and that he lost old documents during his moves from house to house years ago. The applicant further claims that he entered the United States prior to January 1, 1982, and has continuously lived in the country, except for a brief absence in 1987.

In denying the application the director noted that the applicant claimed to have entered into the United States on October 16, 1981 from Canada when he was 9 years old but that he had failed to submit evidence of such entry. The director further noted that the applicant's statement during his interview with an immigration officer was not credible in that he claimed not to have attended school in the United States even though he claimed that he entered the country when he was 9 years old. The director also noted that the affidavits submitted by the applicant were not accompanied by identity documents and did not contain evidence of the affiant's presence in the United States during the statutory period. The director noted that the employment affidavit submitted from [REDACTED] Home Improvements company was not accompanied by supporting documentation of its doing business during the requisite period.

On appeal, the applicant reasserts his eligibility for temporary residence status and states that he specifically told the immigration officer at the time of his interview when he entered the United States and that he explained the circumstances surrounding his nonattendance at school in the country. He further states that he responded to the issues raised by the director in the NOID in a timely fashion. He also stated that the affiants were all present in the United States during the requisite period, and that they all have direct personal knowledge of the events and circumstances surrounding his entry and continuous

presence in the country during the requisite period. The applicant concludes by stating that [REDACTED] Home Improvements company was doing business during the statutory period. He submits no evidence.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. The applicant does not submit any evidence to substantiate his claims made on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is noted that the applicant was 9 years old when he claimed to have entered the United States in October of 1981. It is highly unlikely that the applicant was employed as a construction worker at age 9 as claimed by M.A. [REDACTED] Home Improvements company. It is also highly unlikely that the applicant was employed by a restaurant as a child as claimed by [REDACTED]. The affiants [REDACTED] and [REDACTED] fail to indicate with whom the applicant resided as a nine year old boy, how he survived as a child, or whether he attended school. The affiants fail to provide any details regarding their claimed friendship with the applicant, who was a child in 1981, and they fail to provide any evidence that they were present in the United States throughout the requisite period.

Although the applicant claims to have resided in the United States since he was nine years old, he provided neither school records nor medical records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. Although he stated during his interview with an immigration officer that he arrived in the United States with his parents and stayed with his father's friend, there has been no evidence submitted to substantiate such claim. The evidence submitted by the applicant is not credible and conflicts with statements made by the applicant on his Form I-687 application. Here, the applicant has failed to submit evidence sufficient to corroborate his assertions made on appeal.

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 the applicant's reliance upon his unsubstantiated statements and documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.