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**U.S. Citizenship
and Immigration
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FILE: [Redacted]
MSC 05 235 15254

Office: NEW YORK Date:

AUG 28 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:
[Redacted]

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 "Robert P. 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 established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

AFFIDAVITS/WITNESS STATEMENTS

- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant since December of 1981, when the two met on a subway. The affiant states that the two became friends and have maintained contact since that time.
- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant since October of 1986 when the two met at the home of a common friend who resided at [REDACTED]. The affiant states that the applicant attempted to file for legalization in 1987 but was prevented from filing because he had traveled outside the United States without advance parole.

The address noted by the affiant above as being the address of a common friend, is the applicant's address as stated by the applicant in the Form I-687. The affiant indicates that the applicant traveled to India in 1987 and back the following month. The application Form I-687 does not list any departures from the United States until 1989.

- [REDACTED] submitted a sworn affidavit wherein he states that he personally knew the applicant lived in the United States from 1987 – 1989. The two became friends after meeting in a park and have remained friends. The affiant states that the applicant attempted to file for legalization in 1987, but his application was rejected because he had traveled outside the United States without advance parole. The affiant states that the applicant returned to India for four weeks in 1987. The applicant does not list this absence from the United States on the Form I-687. The affiant states that the applicant returned to India in 1989 and remained there until 2002 when he returned to the United States.

[REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant as a friend since April of 1981, and that he personally knows that the applicant lived in the United States from 1981 – 1989. The affiant states that the applicant lived at [REDACTED]

The applicant states in the Form I-687 that he lived at [REDACTED] NY from 1981 – 1989. The affiant states that he lived at [REDACTED] Flushing, NY from 1981 – 1989.

- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant as a friend since 1981, and that he personally knows the applicant has resided in the United States from 1981 – 1989. The affiant states that the applicant lived at [REDACTED]

The applicant states in the Form I-687 that he lived at [REDACTED]

- [REDACTED] submitted a sworn affidavit wherein he stated that: he is the applicant's first cousin; he personally knows that the applicant traveled to the United States illegally in 1981; he maintained contact with the applicant by mail and through telephone conversations while the applicant was in the United States; the applicant visited India in 1987 for a period of one month before returning to the United States; and the applicant moved back to India in 1989 and lived there until 2002 before returning to the United States.

The applicant does not list a 1987 departure on the Form I-687.

As stated earlier in this decision, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The evidence submitted by the applicant in support of his application includes the above referenced witness statements. The witness statements indicate generally that the statement writers have known the applicant for various time periods, and that the applicant has resided in the United States during the requisite period. The affiants state that they are friends of the applicant and generally state how they met the applicant and that they have maintained a relationship with him. None of the statements provide detailed information of the writer's

relationship with the applicant or establish that the applicant has resided continuously and unlawfully in the United States for the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements do not provide detailed information establishing the extent of the affiant's association or relationship with the applicant, or detailed accounts of the affiant's ongoing association establishing a relationship under which the writers could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. Two of the affidavits list an address for the applicant during the entire requisite period which is different from the address listed by the applicant for his residence from 1981 – 1989. One of the affiants places himself at the address where the applicant stated he lived from 1981 – 1989, and the applicant at a different address. Another affiant identified the C [REDACTED] address in New York as the home of a common friend, not the applicant's home as stated by the applicant on the Form I-687. The applicant himself provides contradictory information concerning his address while in the United States. During his legalization interview he informed a United States immigration officer that he lived with a friend on [REDACTED], in New York. No such address is listed by the applicant on his Form I-687. The AAO notes also the inconsistencies between several of the affiants, who refer to the applicant's trip to India in 1987, which the applicant failed to list on the Form I-687. To be probative, witness statements and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the witness statements presented fail to establish continuous residence in an unlawful status in the United States for the requisite period.

Further, the applicant has stated under penalty of perjury his address while living in the United States during the requisite period. He has supplied contradictory information about his whereabouts during that time frame, and has provided no explanation for those discrepancies. The discrepancies are material to the applicant's claim since they have a direct bearing on whether he was in fact in the United States during the requisite period. The applicant's evidence, therefore, shall be afforded little weight as it is not deemed credible. 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. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted no additional evidence in support of his Form I-687 petition.

Therefore, based upon the foregoing, the applicant 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.