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**U.S. Citizenship  
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FILE: MSC-06-098-11248

Office: NEWARK

Date: **AUG 29 2008**

IN RE: Applicant:



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 be "R. 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, Newark. 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 addresses the discrepancies in his application and furnishes additional evidence.

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. 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 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 on January 6, 2006. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided in White Lake, New York from December 1981 until December 1984 and South River, New Jersey from December 1984 until January 1989. At part #33, he showed that during the requisite period he was employed as a dishwasher with Steventville Lake Hotel in Swan Lake, New York from January 1982 until September 1983; self-employed as a cleaner in Swan Lake, New York from October 1983 until December 1984; and self-employed as a cleaner in South River, New Jersey from January 1985 until December 1988.

On February 17, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded 30 days to submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous

documentation that may be furnished 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following documentation in rebuttal to the NOID:

- A fill in the blank statement entitled "Affidavit of Witness" from signed  
on March 15, 2006.<sup>1</sup> This statement in pertinent part provides:

I know the applicant because his sister is married to my nephew. In 1985 the applicant came to my home in South River for [sic] visit. After that visit, the applicant moved from Waite [sic] Lake, N.J., to my house in South River, N.J. We worked together as cleaners from 1985 to 1988. The applicant was illegal resident in the U.S.A. He said to me on that occasion [sic], that he had tried to apply for the 1986 amnesty program, but the immigration service refused his application. In 1989 the applicant moved back to Brasil [sic].

The statement indicates that [REDACTED] and the applicant resided together at her house in South River, New Jersey. However, it does not provide the residential address of this house. Nor does it specify the time period during which they resided together. Additionally, the statement indicates that they worked together as cleaners from 1985 until 1988. However, it does not convey their duties or where they were employed. Given these deficiencies, this statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period;

A receipt from Econo Lodge, Monticello Budget Motel, Inc., Monticello, New York. However, the receipt does not indicate the year it was issued. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.;

- A blank postcard from Swan Lake Resort Hotel. The applicant showed on his application that he was employed as a dishwasher with Steenville Lake Hotel<sup>2</sup> in Swan Lake, New York

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<sup>1</sup> Although this document is entitled, "Affidavit of Witness," it does not show that it was sworn to before a notary public. Therefore, the AAO will refer to this document as a statement.

<sup>2</sup> The applicant indicated in a written statement that the Steenville Lake Hotel no longer exists and Swan Lake Resort Hotel is "the new hotel." It is unclear from this statement whether Swan Lake Resort Hotel is the successor to Steenville Lake Hotel.

from January 1982 until September 1983 and he was self-employed as a cleaner in Swan Lake, New York from October 1983 until December 1984. However, the postcard bears a copyright date of 2004. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period;

- **Two similar color photographs of a person standing outside Swan Lake Resort.** These photographs are not date stamped to establish the date they were taken or developed. Furthermore, the applicant failed to identify the person featured in the photographs. Therefore, they are without any probative value as evidence of the applicant's residence in the United States during the requisite period.; and
- A statement from the applicant detailing his attempts to obtain documentation related to his residence in the United States during the requisite period.

On December 14, 2006, the applicant received a NOID from the Acting District Director, Newark. The director noted the following:

- The applicant's Form I-687 states that he lived on Riverview Drive in South River from December 1984 until September 1986. However, the applicant testified that the only street on which he resided in South River, before he traveled to Brazil in 1989, was Whitehead Avenue;
- The applicant testified that he traveled Canada in 1985. However, this is not listed on his Form I-687 application;
- The applicant has a child who was born in Brazil in 1987. This indicates that he was actually residing in Brazil during the requisite period. The applicant failed to provide a birth certificate showing when, where, and by whom the birth was registered; and
- The only document the applicant submitted to show his presence in the United States during the requisite period is an affidavit. This document does not contain sufficient detail of the affiant's relationship to the applicant throughout the requisite period to be persuasive. The affidavit is not accompanied by proof of the affiant's U.S. citizenship or lawful permanent resident (LPR) status or evidence of where s/he resided during the requisite period. Furthermore, the affiant only claims to have known the applicant since 1985.

The applicant was afforded 30 days to furnish additional evidence to overcome the reasons stated in the NOID. However, the applicant failed to submit a rebuttal statement or additional evidence in response to the NOID.

On January 29, 2007, the director issued a notice to deny the application. The director determined that the application would be denied for the reasons stated in the NOID. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that his girlfriend was residing in the United States and moved back to Brazil in August 1986 when she became pregnant. The applicant states that his daughter was born in Brazil in March 1987. The applicant indicates that his girlfriend registered the birth of their daughter. The applicant states that he has attached her birth certificate.<sup>3</sup> The applicant asserts that he resided in a condominium complex on Riverview Drive that was located off of Whitehead Avenue. The applicant states that many people use the two names interchangeably. The applicant submits mapquest.com printouts for directions to [1-99] Riverview Drive, South River, New Jersey, [REDACTED]. The printouts show that [1-99] Riverview Drive is located off of Whitehead Avenue. The applicant also submits a photocopy of a map showing Whitehead Avenue. The applicant made a notation on this map indicating the location of Riverview Drive Apartments. Finally, the applicant asserts that his failure to list his two week visit to Canada on his Form I-687 was an oversight because he did not realize its significance. The applicant states that he had trouble understanding, translating, and completing the application.

The applicant's assertions on appeal fail to overcome the basis for the director's denial. The applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, a statement from [REDACTED], a receipt from Econo Lodge, a postcard from Swan Lake Resort Hotel, and two photographs. The statement from Ms. [REDACTED] lacks considerable detail on her relationship with the applicant during the requisite period. The receipt from Econo Lodge and postcard from Swan Lake Resort Hotel fail establish that they were issued to the applicant during the requisite period. Lastly, the two photographs of a person standing outside Swan Lake Resort fail to indicate the date that they were taken or developed and the identity of the person featured in the photographs. As such, these documents are without any probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding

In this case, the absence of credible and probative 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 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.

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<sup>3</sup> The record shows that the applicant only furnished a certified English translation of his daughter's birth certificate.

§ 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.