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[Redacted]

FILE: [Redacted] Office: BOSTON Date: **FEB 04 2008**
MSC-06-082-14012

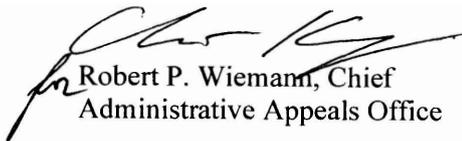
IN RE: Applicant: [Redacted]

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. The file has 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.


Robert P. Wiemam, 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. 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, counsel for the applicant explained the difficulty of obtaining evidence of the applicant's residence in the United States after the passage of time; stated that the evidence provided by the applicant meets his burden of proof, and stated that an objective examination of the evidence was not undertaken because the application was adjudicated by the same officer who adjudicated the applicant's application for permanent 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)(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).

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 submitted evidence is not sufficiently probative and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 21, 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 listed the following addresses during the requisite period: [REDACTED] Woodside, New York from October 1981 to 1983; and [REDACTED] New Haven, Connecticut from 1983 to 1992. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etcetera, the applicant listed Our Lady of Sorrows Church in Corona, New York from 1985 to 2002. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Ecuador because his mother passed away, from September 1987 to October 1987. At part #33 where applicants were asked to list all employment in the United States the applicant listed the following positions: Dishwasher at University Restaurant in Manhattan, New York from October 1981 to April 1987; and kitchen helper at [REDACTED] in Hamden, Connecticut from June 1987 to March 1991.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, much of which does not relate to the requisite period. The applicant also provided multiple attestations that fail to confirm that the applicant resided in the United States during the requisite period. These include the attestations from Representative [REDACTED], and [REDACTED]

The applicant provided a declaration from [REDACTED], Pastor of Our Lady of Sorrows Church in Corona, New York dated April 18, 2002. In this declaration, Reverend Healy stated that the applicant has been registered in the parish since 1985 and attends Sunday Mass on a regular basis. This declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant provided a form affidavit from [REDACTED] in which the affiant stated that the applicant resided at [REDACTED] Woodside, New York from October 1981 to June 1987 and at [REDACTED] New Haven, Connecticut from June 1987 to July 1993. This affidavit is inconsistent with the information provided in the applicant's Form I-687 application, where he indicated he lived at the [REDACTED] address until 1983 instead of until June 1987 and at the Chapel St. address starting in 1983 instead of June 1987. These inconsistencies call into question whether [REDACTED] can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] in which the affiant stated that the applicant lived with the affiant from October 1981 to June 1987 at the [REDACTED] address in Woodside, New York. This affidavit is inconsistent with the information provided in the applicant's Form I-687 application, where he indicated he lived at the [REDACTED] address until 1983 instead of until June 1987. This inconsistency calls into question whether [REDACTED] can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the applicant lived in Woodside with the affiant's brother, [REDACTED] from the time the applicant came to the United States until June 1987. This affidavit is inconsistent with the information provided in the applicant's Form I-687 application, where he indicated he lived at the Woodside address on [REDACTED] until 1983 instead of until June 1987. This inconsistency calls into question whether [REDACTED] can actually confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] president of [REDACTED]. This declaration states that the applicant was employed by [REDACTED] from June 24, 1987 to March 10, 1991. The declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the

information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant provided an original letter dated February 5, 1983 and addressed to the applicant from [REDACTED], Pastor of Our Lady of Sorrows Church. It is noted that the pastor's last name is spelled differently in this letter than in the declaration signed by the pastor and dated April 18, 2002, where the pastor's last name is spelled '[REDACTED]'. This inconsistency calls into question the authenticity of these documents and, as a result, casts doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period. An additional discrepancy is noted with respect to the notary stamp on the letter. Specifically, the date of notarization appears to be altered from "5 February '08" to "5 February 1983" and the date of expiration of the notary's stamp appears to have been altered from "Aug. 31, 2008" to "Aug. 31, 1983." This apparent alteration casts additional doubt on the applicant's claim to have resided in the United States throughout the requisite period. Lastly, if no doubt had been cast on the credibility of this document it would, at most, confirm that the applicant resided in the United States during February 1983.

The applicant also provided a lease document for [REDACTED], Woodside, New York listing the applicant as tenant for the period starting January 1, 1983 and ending December 31, 1985. This lease is inconsistent with the information provided on the applicant's Form I-687, where the applicant indicated he resided at the [REDACTED] address from October 1981 to 1983 instead of from January 1983 until December 1985. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

In denying the application the director noted 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.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period that is inconsistent with the information in his Form I-687 application, is inconsistent with other documents provided by the applicant, or appears to have been altered. The applicant has submitted attestations that fail to confirm he resided in the United States during the requisite period, fail to conform to regulatory standards, or are inconsistent with the applicant's Form I-687. The following attestations failed to confirm the applicant resided in the United States during the requisite period: Attestations from Representative [REDACTED] and [REDACTED]. The declarations from [REDACTED] [sic] and [REDACTED] do not conform to regulatory standards. The affidavits from [REDACTED], and [REDACTED] are inconsistent with the applicant's Form I-687.

The absence of sufficiently detailed supporting 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 contradictions between the applicant's statements on his Form I-687 and the documents he submitted, and considering his reliance upon 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.