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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] MSC-04-295-10693

Office: NEW YORK Date: FEB 07 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. 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. 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 information submitted was insufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). Specifically, the applicant failed to establish that he had resided in the United States continuously throughout the requisite period.

On appeal, counsel for the applicant stated that the director failed to give proper consideration to the documents submitted by the applicant. In addition, the applicant submitted new documents in support of his application.

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 meet his burden of establishing that he resided continuously in the United States in an unlawful status for the duration of the requisite period. Here, the submitted evidence does not meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 21, 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 the following addresses during the requisite period: [REDACTED] from November 1981 to October 1984; and [REDACTED] from November 1984 to August 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following visits to Egypt: June 1983 to July 1983 to attend the applicant’s brother’s wedding; March 1986 to April 1986; and March 1988 to April 1988. At part #33 where applicants were asked to list all employment in the United States, the applicant listed the following positions: Stockboy for Bigboy Deli from December 1981 to November 1984; part-time deli man for Grabstein Deli from January 1982 to October 1983; part-time deli man for Carnegie Deli and Restaurant from October 1983 to August 1987; stock boy for Jemy Candy Store from January 1985 to June 1987; and deli man for Carnegie Deli and Restaurant from August 1987 to December 1990.

The record also shows that the applicant submitted a Form I-687 application to CIS on February 15, 1991. At part #36 where applicants were asked to list all employment in the United States since first entry, the applicant listed only the following positions during the requisite period: Stock boy for Big Boy Deli from December 1981 to November 1984; stock boy for "Jemy Candy Stor[e]" from January 1985 to June 1987; and "deli man[ager]" for Carnegie Deli from August 1987 to September 1990. This is inconsistent with the information provided by the applicant on his current Form I-687 application, where the applicant also indicated he was employed at Grabstein Deli from January 1982 to October 1983 and at Carnegie Deli and Restaurant from October 1983 to August 1987. It is noted that the applicant also failed to list these periods of employment on the Form G-325A Biographic information he submitted with his Form I-485 application on December 2, 2001. It is also noted that the record contains a letter from the applicant's counsel in which counsel stated, "We believe that employment history as explained on previously submitted forms (both I-485 and I-687) was not properly presented." Yet, the applicant has failed to explain the inconsistency in his forms. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Since the applicant has failed to explain the contradiction between the information provided on his current and his original Form I-687 applications, this inconsistency has not been overcome. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

The record also includes the applicant's Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents signed by the applicant and prepared on October 2, 2007. At question #19 where applicants were asked when they first arrived in the United States, the applicant stated, "July 22, 1983." At question #23 where applicants were asked to list all departures from and returns to the United States since first entry, the applicant listed only the following: departure on October 10, 1984 to Alexandria, Egypt; and return to New York on April 24, 1988. Therefore, the applicant's Form EOIR-42B tends to indicate the applicant resided in the United States, at most, only from July 22, 1983 to October 10, 1984 and then from April 24, 1988 until the time he attempted to file for temporary residence prior to May 1, 1988. This is inconsistent with the information on the current Form I-687 application and with the applicant's claim to have resided continuously in the United States throughout the requisite period. This inconsistency casts serious doubt on the applicant's claim to meet the residency requirements for temporary resident status.

The record also includes a copy of a United States Consulate receipt dated April 3, 1988. This document tends to show the applicant was outside the United States in April 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. The applicant provided two sets of photos that do not identify the subject of the photos or indicate where the photos are taken. These photos

carry no evidentiary weight in determining whether the applicant is eligible for temporary resident status.

The applicant provided a copy of a B-2 visa stamp issued on July 6, 1983, together with a stamp indicating he entered the United States on July 22, 1983. This indicates the applicant entered the United States pursuant to B-2 visa authorization on July 22, 1983. This document detracts from the applicant's claim of continuous unlawful residence in the United States because it tends to show the applicant entered the United States lawfully within the requisite period.

The applicant provided a document from the Consulate of Egypt dated February 4, 1991, stating that the applicant has "registered yearly at the consulate in New York since December 15, 1981." This document fails to confirm the applicant resided in the United States during the requisite period.

The applicant provided a copy of his brother's marriage certificate indicating his brother was married in New York on August 28, 1983. With the above referenced visa stamp, this document tends to show that the applicant entered the United States in lawful B-2 visa status for the purpose of attending his brother's wedding. This detracts from the applicant's claim of continuous unlawful residence throughout the requisite period.

The applicant provided multiple attestations that fail to specifically confirm he resided in the United States during the requisite period. These include: A letter from Robert Graziano, a declaration from [REDACTED] a declaration from [REDACTED] two declarations from [REDACTED] a declaration from [REDACTED] and a declaration from [REDACTED]

The applicant provided a declaration from [REDACTED] manager of Carnegie Delicatessen and Restaurant (Carnegie Deli) dated January 12, 2004. In this declaration, [REDACTED] stated that the applicant has been employed by Carnegie Deli since 1983, and that the applicant was promoted to manager in 1991. This is inconsistent with the information on the applicant's original Form I-687 and on his Form G-325A, where he indicated that he did not start working at Carnegie Deli until 1987. This inconsistency calls into question [REDACTED]'s ability to confirm the applicant's residence during the requisite period.

The applicant provided a declaration from [REDACTED] dated April 27, 2005. In this declaration, [REDACTED] stated that he is currently employed at Carnegie Deli and has been friends with the applicant since 1986 when they began working together. This document fails to confirm that the applicant resided in the United States at any time other than in 1986. In addition, the declaration fails to include details regarding the applicant's addresses and the declarant's frequency of contact with the applicant during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] dated January 7, 2004. In this declaration, [REDACTED] stated that he shared a rental apartment with the applicant at the [REDACTED] S [REDACTED] from December 1984 to August 1988. The declarant provided no detail regarding

how he met and came to share an apartment with the applicant, his frequency of contact with the applicant during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm the applicant's residence during the requisite period. The applicant provided another declaration dated July 17, 2007 that appears to be from the same individual, although the declaration lists his name as [REDACTED]. In this declaration, [REDACTED] stated that he lived with the applicant at the [REDACTED] from 1984 to 1988, and the bills were under the declarant's name. This declaration also lacks the detail that was not provided in [REDACTED] earlier declaration. In addition, although the declarant indicated the bills were in his name, he failed to provide copies of bills. As a result, this declaration is found to lack sufficient detail to confirm the applicant's residence during the requisite period.

The applicant provided a declaration from [REDACTED] dated January 6, 2004. The declarant stated that he is employed at the Carnegie Deli. The declarant indicated that he has been friends with the applicant since 1982. The declarant also stated that the applicant and the declarant worked together at the Carnegie Deli from December 1983 to the present time. The applicant also provided a declaration from [REDACTED] dated June 13, 2004 that contained the same information as his prior affidavit, but also explained that the declarant has been friends with the applicant since 1982 when the applicant worked for the declarant's father's store. Lastly, the applicant provided a declaration from [REDACTED] dated April 29, 2005 that contains the same relevant information as the June 13, 2004 declaration. Again, these declarations are inconsistent with the information provided on the applicant's original Form I-587 and on his Form G-325A, where the applicant indicated he did not begin working at the Carnegie Deli until 1987. This inconsistency calls into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] dated May 20, 2005 that indicates the declarants have known the applicant since 1982. This declaration states that the applicant has been in the United States for 23 years. This indicates that the applicant has resided in the United States since approximately 1982. This declaration lacks any detail regarding the addresses where the applicant resided in the United States, any periods of absence from the United States, and the declarants' frequency of contact with the applicant during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm the applicant's residence during the requisite period.

The applicant provided a declaration from [REDACTED] dated January 30, 1984. The declarant stated that the applicant was seen at the declarant's office on October 28, 1983 and requires therapy and follow-up examinations for a minimum of six months from the date of the last examination on January 30, 1984. This declaration tends to indicate the applicant was present in the United States on October 28, 1983 and January 30, 1984. The declarant also stated that the applicant "is known with depressive state and psycho-somatic manifestations [sic] . . ." It is noted that the incorrect spelling used in this declaration was raised in the NOID issued on March 12, 2004, in response to the applicant's I-485 application. The director stated that the misspelling of the word

“psychosomatic” by the medical doctor who prepared the declaration cast doubt on the credibility of the declaration. In response to this concern, in a letter dated August 18, 2004, counsel for the applicant stated that a spelling mistake does not lead to the conclusion that the veracity of a document is doubtful. Also in response to this concern, the applicant provided two additional declarations from [REDACTED]. These letters list the date as April 25, 2005, in what appears to be the same handwriting that the declarant used for each declaration. The first of these declarations states that the declaration dated January 30, 1984 is an authentic letter including a misspelling of the word “psychosomatic” due to typing error. The second of these declarations states that the applicant was the declarant’s patient from October 28, 1983. Neither of these documents confirms that the applicant resided in the United States during the requisite period. It is noted that the two declarations dated April 25, 2005 include notary stamps that are hand-dated April 29, 2005. The fact that the handwritten date of the declarations do not match the date the letters were notarized casts doubt on the authenticity of the signatures and the declarations in general. In addition, it is noted that the signature appearing on the April 25, 2005 declarations does not appear to match the signature on the declaration from January 30, 1984. This casts additional doubt on the authenticity of each of the three declarations attributed to [REDACTED].

In denying the application the director noted that the information submitted was insufficient to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). Specifically, the applicant failed to establish that he resided in the United States continuously throughout the requisite period.

In summary, the applicant has made multiple contradictory statements on documents that exist in the record and has not provided any credible contemporaneous evidence of unlawful residence in the United States relating to the requisite period. The applicant has submitted attestations that fail to confirm the applicant resided in the United States during the requisite period, are inconsistent with information provided by the applicant, or lack sufficient detail. Specifically, the letter from [REDACTED], the declaration from [REDACTED], the declaration from [REDACTED], two declarations from [REDACTED], the declaration from [REDACTED], the declaration from [REDACTED], and the declarations from [REDACTED] all fail to confirm the applicant resided in the United States during the requisite period. The declaration from [REDACTED] and the declarations from [REDACTED] are inconsistent with information provided on the applicant’s original Form I-687 and on Form G-325A. The declaration from [REDACTED], the declarations from [REDACTED], and the declaration from [REDACTED] lack sufficient detail.

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 applicant’s contradictory statements on his applications and 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.