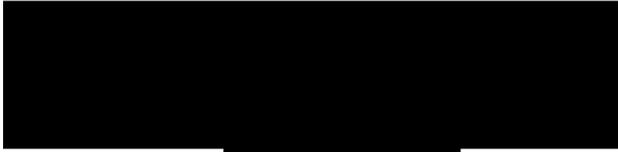




U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-05-250-13468

Office: NATIONAL BENEFITS CENTER

Date: **FEB 22 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. 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 Director, National Benefits Center. 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 furnishes additional documentary evidence of his continuous residence in the United States during the requisite period.

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 relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on June 7, 2005. At part #30 of the Form I-687 application, applicants are asked to list all residences in the United States since first entry. The applicant reported that he has resided in Richmond Hill, New York from May 2000 until Present. The applicant showed two other addresses in Jamaica, New York, however he failed to indicate his dates of residence at these addresses. At part #33, applicants were asked to list their employment in the United States dating back to January 1, 1982. The applicant reported his current employment with Legend Cook House since February 2005 and his previous employment with Double Happiness Restaurant from January 2002 until December 2004. The applicant did not indicate his type of occupation while employed with these businesses. The applicant provided no other employment information other than stating that he was “self employed” on an unknown date in an unspecified occupation. The lack of detail in the applicant’s Form I-687 application draws into question the overall credibility of his claimed residence in the United States during the requisite period.

The applicant submitted with his Form I-687 application a copy of the biographical page of his passport. While this document provides evidence of the applicant's identity, it does not relate to his residence in the United States during the requisite period.

On November 15, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided 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. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted in response to the NOID identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED]. These affidavits are deficient in several respects. The affidavits do not contain any information on when the affiants first met the applicant. The affidavits also fail to provide any information on the affiants' contact with the applicant during the requisite period. There is no indication that the affiants have direct personal knowledge of the applicant's residence in the United States during the requisite period. Therefore these affidavits cannot be afforded any weight as probative evidence of the applicant's residence in the United States during the requisite period.

The director denied the application for temporary residence on August 31, 2006. In denying the application, the director noted that the affidavits from [REDACTED] and [REDACTED] fail to indicate whether the affiants have direct personal knowledge of the events and circumstances related to the applicant's residency. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that the applicant had failed to meet his burden of proof in the proceeding.

On appeal, the applicant furnishes additional evidence of his residence in the United States during the requisite period.

The applicant furnished a fill-in-the-blank affidavit from [REDACTED] which states she has known the applicant since 1981. This affidavit is deficient because it does not provide any information on how the affiant first became acquainted with the applicant. The affidavit also fails to provide any information on the extent of the affiant's contact with the applicant in the

United States during the requisite period. Therefore, this letter can only be afforded minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.

The applicant furnished a notarized letter from [REDACTED] which provides, "I have known [REDACTED] since 1982, and [he] is currently living in the USA . . . Since being in the USA, [REDACTED] has lived at [REDACTED] Queens, NY 11418 . . ." This letter lacks considerable detail and is inconsistent with the applicant's Form I-687 application. The letter does not provide any information on how the author first became acquainted with the applicant. The letter also fails to provide any information on the extent of the author's contact with the applicant in the United States during the requisite period. Moreover, the author's assertion that the applicant has lived in Richmond Hill, Queens, New York "since being in the USA" is inconsistent with the applicant's Form I-687 application, which lists his two other addresses in Jamaica, New York. Hence, this letter is not reliable and credible evidence of the applicant's residence in the United States during the requisite period.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). 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). The application of the "preponderance of the evidence" standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80.

Pursuant to *Matter of E-M-*, evidence submitted under Section 245A of the Act includes the completed Form I-687, Application for Status as a Temporary Resident, and any documentary evidence to support and corroborate the information contained in the Form I-687. The applicant submitted an incomplete Form I-687 application. The applicant failed to provide on this application any information regarding his residence and employment in the United States during the requisite period. The applicant also neglected to provide on this application any information regarding his affiliations or associations with any clubs, organizations, churches or businesses in the United States. Consequently, the applicant's Form I-687 application is not probative evidence of his residence in the United States during the requisite period.

The applicant submitted statements from his acquaintances as corroborating evidence of his eligibility for temporary resident status. In determining the weight of these statements, they should be examined first to determine upon what basis the author is making the statement and whether the statements are internally consistent, plausible, or even credible. Most important is whether the statements are consistent with the other evidence in the record. *Matter of E-M-*, 20 I&N Dec. at 81. It should be noted that with an incomplete Form I-687, there is no other evidence in the record with which to assess the consistency, plausibility and credibility of these statements. In denying the application, the director determined that the affidavits from Wazim

█ and █ fail to indicate whether the affiants have direct personal knowledge of the events and circumstances related to the applicant's residency. On appeal, the applicant failed to remedy the noted deficiency in these affidavits. The applicant instead submitted statements from █ and █ as corroborating evidence of his residence. However, these statements also fail to indicate whether the authors have direct personal knowledge of the events and circumstances related to the applicant's residency. Moreover, the statement from █ is inconsistent with the applicant's Form I-687 application. Therefore, the documentation submitted on appeal does not overcome the basis for the director's denial.

In summary, the applicant has failed to provide probative evidence of his residence 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). His application for temporary resident status consists of an incomplete Form I-687 application and supporting statements that lack considerable detail as noted. These documents, when viewed either individually or within the context of the totality of the evidence, are of little or no value as probative corroborating evidence. The applicant's failure to provide probative evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

In conclusion, 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. § 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.