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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted]  
MSC-05-286-12505

Office: NEWARK

Date: JAN 04 2008

IN RE: Applicant: [Redacted]

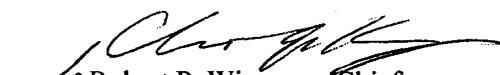
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, Cherry Hill, New Jersey. 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 reasserts the applicant's eligibility to adjust to temporary resident status.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of his admissibility, as well as whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982, shall continue.

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. See CSS Settlement Agreement, paragraph 11 at page 6 and 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.

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit sufficient evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on July 13, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED], Brooklyn, New York, as his address from December of 1980 to May of 1987; and [REDACTED] New York, New York, as his address from June of 1987 to May of 1992. Similarly, at part #33, the applicant indicated that he was employed by Super Golden Chinese Restaurant located in Sea Bright, New Jersey, as a dishwasher from January of 1980 to April of 1981, and as a chef from May of 1981 to January of 1996.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted the following attestations:

- A translated letter from [REDACTED] in which he stated that he began work at the Super Golden Chinese Restaurant in January of 1981 where he met the applicant who was employed as a dishwasher. He further stated that he and the applicant became good friends and kept in touch with each other. Mr. [REDACTED] concluded by stating that he verified that the applicant came to the United States in December of 1980. It is noted that although the translation is notarized, the original letter is not. Here, Mr. [REDACTED] fails to indicate how he knew that the applicant came to the United States in December of 1980 when he stated that he didn't meet the applicant until he began working for the Super Golden Chinese Restaurant in January of 1981. He has failed to specify the frequency with which he saw the applicant during the requisite period. He has not provided evidence that he himself was present in the United States during the requisite period. Although Mr. [REDACTED] attested to the applicant's residence in this country since before January of 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period. It is noted that Mr. [REDACTED] provided and the AAO recognizes the copy of his New Jersey Driver License.
- A translated letter from [REDACTED] in which he stated that he first met the applicant in May of 1983 at the Chinese Cultural Association Workshop. Mr. [REDACTED] further stated that he and the applicant have remained friends. Here, the affiant fails to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although Mr. [REDACTED] attested to the applicant's residence in this country since 1983, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period. Mr. [REDACTED] claims that he first met the applicant in May of 1983, thus he is unable to verify that the applicant was in the country prior to January 1, 1982. The affidavit invariably lacks detail that would lend credibility to the

claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period. It is noted that Mr. [REDACTED] provided and the AAO recognizes the copy of his New Jersey Driver License.

In denying the application the director determined that the applicant had not met his burden of proof, in that he failed to submit sufficient evidence to demonstrate his residence in the United States throughout the statutory period. The director stated that the applicant's representative had failed to address the flaws found in the letters submitted by the applicant; had failed to resolve the issues surrounding the applicant's absence from the United States; had failed to address the issues surrounding the applicant's marriage; and had failed to address the issue dealing with the applicant's preparation of his Form I-687 application.

On appeal, counsel states that the applicant testified that he entered the United States in January of 1980 and that he left the United States briefly in October of 1987, August of 1998, and October of 1998. Counsel further states that the applicant submitted two statements and that they support the claim that he was continuously residing in the United States during the requisite period, and that all affidavits are credible and amendable to verification with addresses, telephone numbers and identification cards. Counsel also states that with regard to the applicant's marital status, he explained that his marriage was not registered with the registry of marriages, and therefore, he had no documentation attesting to his marriage. Counsel states that with regard to the preparation of the applicant's Form I-687 application, the preparer inadvertently failed to complete section #44.

The applicant has not submitted any evidence on appeal sufficient to overcome the director's denial. Although counsel makes statements with reference to the issues addressed by the director, there has been no independent corroborating documentation presented to support the claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). Here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. As was noted by the director, the applicant submitted letters that were not notarized, not accompanied by evidence of the writer's status in the United States as a citizen or legal permanent resident, and not accompanied by evidence of the writer's presence in the United States prior to January 1, 1982. The applicant has failed to meet his burden of proof, and has failed to overcome the grounds for the director's denial, in that he has not provided tangible evidence or credible documentation to attest to his claimed presence in the United States during the requisite period.

The absence of sufficiently detailed documentation to corroborate and support 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 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.