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**U.S. Citizenship
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[REDACTED]

FILE:

MSC-05-214-10032

Office: NEW YORK

Date:

JAN 11 2006

IN RE:

Applicant: [REDACTED]

APPLICATION:

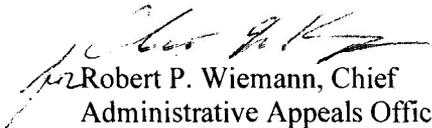
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 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 in the Notice of Intent to Deny (NOID) 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. She found 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. The director found that the applicant did not provide credible evidence in response to the NOID and denied the application for this reason and for the reasons explained in the NOID.

On appeal, the applicant responded to the issues raised by the director in relation to the credibility of the evidence provided in response to the NOID. The applicant also provided additional evidence from the declarants whose credibility the director had questioned.

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 May 2, 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] Jackson Heights, New York from August 1981 to December 1986; and [REDACTED] Jamaica, New York from January 1987 to May 1996. At part #33 where applicants were asked to list all employment in the United States, the applicant listed only the following position: “Self-employed as a door to door daily basis laborer,” from October 1981 to present.

The applicant provided declarations from multiple individuals. The applicant submitted a declaration from [REDACTED] dated September 9, 2004. The declarant stated that he has known the applicant since December 1981. He also stated that he had worked construction jobs with the applicant at different times in 1982 and 1988. The declarant stated that the applicant has been continuously physically present in the United States in an unlawful status since October 1981 except for a brief absence. This declaration fails to include detail regarding how the

declarant met the applicant, considering that they first worked together in 1982 yet they met in 1981. The declarant also failed to provide information regarding the frequency of his contact with the applicant; the addresses at which the applicant resided during the requisite period; and the origins of the declarant's knowledge of the applicant's continuous physical presence. As a result, this declaration is found to lack sufficient detail to confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED]. The declarant stated that he has known the applicant since 1981 and that the applicant worked for the declarant "sometimes" from 1984 through 1988. This declaration does not confirm the applicant resided in the United States for any specific part of the requisite period. In addition, the declaration appears to be inconsistent with the information listed on the applicant's Form I-687, which indicates his only employment was as a door-to-door laborer rather than that he worked for the declarant "sometimes" during the four year period from 1984 to 1988. This inconsistency calls into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED]. The declarant stated that the applicant was his close friend since 1981 when the applicant was the declarant's neighbor. The declarant also stated that he accompanied the applicant to the Immigration and Naturalization Service office in 1987. This declaration fails to confirm the applicant resided in the United States throughout the requisite period.

The applicant provided a declaration from an individual identified as the general manager of N.S. General Contractor, whose signature is illegible. The declarant stated that the applicant worked with N.S. General Contractor as a part-time construction helper from December 1983 to June 1989 and was paid \$5 per hour in cash. This information is inconsistent with the applicant's Form I-687, which fails to list the applicant's employment with N.S. General Contractor. In addition, this declaration fails to conform to regulatory standards for letters from employers as listed 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, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Lastly, as stated above, the name of the declarant is illegible, rendering the declaration unamenable to verification and further detracting from its credibility.

The applicant submitted a declaration from [REDACTED]. The declarant stated that the applicant has been personally known to him since November 1981 when they met at a community function in New York. The declaration lists the applicant's addresses during the requisite period. Although not required, the declarant failed to provide evidence of his presence in the United States during the requisite period. In addition, he failed to provide information regarding the frequency of his contact with the applicant during the requisite period.

The applicant submitted a declaration from [REDACTED]. The declarant stated that she met the applicant in New York in 1987. This declaration fails to indicate the declarant had personal knowledge of the applicant's residence in the United States for any part of the requisite period other than 1987. In addition, the declarant failed to indicate the specific dates in 1987 on which she had contact with the applicant.

The applicant also provided a declaration from [REDACTED]. In this declaration, Mr. [REDACTED] stated that he met the applicant in August 1981. This declaration fails to confirm the applicant resided in the United States during the requisite period.

In denying the application, the director found that the applicant had not provided credible evidence in response to the NOID and denied the application for this reason and for the reasons explained in the NOID.

On appeal, the applicant responded to the issues raised by the director in relation to the credibility of the evidence provided in response to the NOID. The applicant also provided additional evidence from the declarants whose credibility the director had questioned. Specifically, the applicant provided additional declarations from [REDACTED] and [REDACTED].

The second declaration from [REDACTED] does not provide any additional information regarding the applicant's residence during the requisite period. Specifically, [REDACTED] again failed to confirm the applicant resided in the United States during the requisite period.

The second declaration from [REDACTED] provides no information regarding the applicant's residence during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that lack sufficient detail, are inconsistent with the information on the applicant's Form I-687, fail to confirm he resided in the United States during the requisite period, or do not conform to regulatory standards. Specifically, the declaration from [REDACTED] lacks sufficient detail. The declaration from [REDACTED] is inconsistent with the applicant's Form I-687 and fails to confirm the applicant resided in the United States throughout the requisite period. The declarations from [REDACTED] and [REDACTED] also fail to confirm the applicant resided in the United States throughout the requisite period. The declaration from N.S. General Contractor is inconsistent with the applicant's Form I-687 and fails to conform to regulatory standards. The declaration from [REDACTED] only indicates the declarant has knowledge of the applicant's residence in New York at some time in 1987. Lastly, the declaration from [REDACTED] confirms the applicant's residence in the United States during the requisite period. However, considering the limitations of the other evidence provided by the applicant, and considering the failure of [REDACTED] to provide details regarding his contacts with the applicant and evidence of his own presence in the United States during the requisite period,

this declaration is found to be insufficient to establish the applicant's residence in the United States throughout the requisite period by a preponderance of the evidence.

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 statements of his declarants, and 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.