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U.S. Citizenship  
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[Redacted]

FILE: [Redacted]  
MSC-06-031-11553

Office: ST. PAUL, MN

Date: **JUL 09 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 both denied and also administratively closed by the District Director, St. Paul, Minnesota. 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. Specifically, the director stated that the applicant did not submit sufficient evidence to establish that he entered the United States before January 1, 1982 and then maintained continuous residence in the United States for the duration of the requisite period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that he previously submitted sufficient evidence to prove that he resided in the United States prior to 1981 and then remained continuously in the United States for the duration of 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) 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 applicant 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 applicant 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 31, 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 showed his address in the United States during the requisite period to be [REDACTED] in Brooklyn, New York from 1981 until 2000. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence from the United States during the requisite period when he went to Canada during month of November in 1986. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was employed as a

self-employed barber at an unspecified location from April 1982 until the date he signed his Form I-687.

Also in the record are the notes from the CIS officer who interviewed the applicant on August 15, 2006. The officer's notes indicate that the applicant stated that he first entered the United States through Canada on July 12, 1981 by car. He stated that he came through Niagara Falls and then first entered the city of Boston, Massachusetts after crossing the border. The applicant stated that he was absent from the United States for one week in 1986 when he visited a friend in Toronto, Canada. He also asserted that he attempted to apply for legalization in January 1988 during the original filing period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant initially failed to submit any evidence that he resided in the United States for the requisite period apart from his own testimony.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on December 6, 2005. In his NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to this NOID, the applicant submitted the following evidence:

- A photocopy of a declaration from [REDACTED] that is not dated or notarized. The declarant states that he first met the applicant in spring of 1982. He also asserts that he is from the same town in Ghana. He states that the applicant called him to say that he

was visiting New York and wanted to see him. It is noted that the applicant indicated on his Form I-687 that he resided in New York from 1981 until 2000. He states that he met the applicant at that time. He also states that the applicant spent one week with him at his house in New Jersey. Though the declarant states that the applicant visited him for one week in 1982, he fails to state that he knows that the applicant was residing in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant. In fact, he only asserts that he saw the applicant for one week of that period. Further, he asserts that the applicant was visiting New York when the applicant has indicated on his Form I-687 that he resided in New York at that time. Because this declaration is significantly lacking in detail, it can be afforded very minimal weight as proof that the applicant resided continuously in the United States during the requisite period.

- A photocopy of a declaration from [REDACTED] that is not notarized or dated. The declarant states that he, like the applicant, is from Ghana and that they are from the same clan. He goes on to say that the first met the applicant at a party in New York in 1982. However, he fails to state that he knows that the applicant was residing in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant. Because this declarant does not indicate that he knows that the applicant resided in the United States during the requisite period, this declaration carries no weight as proof that the applicant did so.
- A declaration from the applicant that is not notarized or dated. The applicant states that he first entered the United States without inspection through Boston, Massachusetts. He states that he was absent from the United States from November 11 to November 29, 1986 when he went to Canada. He states that he went to an Immigration office in Manhattan to file for legalization in January 1988 but was turned away when the officer realized that he had traveled outside of the United States briefly.

The director denied the application on August 25, 2006. In doing so, she both issued the applicant a decision stating that she had denied his application and informed the applicant that his application was administratively closed. The director stated that the evidence submitted by the applicant in response to the NOID issued by the director of the National Benefits Center as noted above did not allow the applicant to meet his burden of proof. The director also noted that though the applicant testified that he entered the United States by driving from Canada into Boston, Massachusetts, this statement was not credible. Here, the director stated that she made this finding because Boston, Massachusetts does not share a border with Canada.

The director further stated that it appeared that the applicant did not meet the Class Member definition. However, she made this determination because the applicant failed to provide evidence that he or his parent or spouse was turned away by an INS or QDE during the original

filing period. Here, it is noted that applicants are not required to submit evidence that they were turned away by either the INS or a QDE in order to establish that they are *prima facie* Class Members pursuant to the CSS/Newman Settlement Agreements. It is also noted that the director made her decision on the applicant's application on the merits. Therefore, the director is determined not to have denied the applicant's claim based on Class Membership.

On appeal, the applicant asserts that he has previously submitted evidence that is sufficient to establish that he is eligible to adjust status to that of a temporary resident. He fails to submit additional evidence for consideration in support of his application.

After reviewing the evidence in the record, the AAO finds that the evidence submitted by the applicant in support of his Form I-687 application does not allow him to meet his burden of proof. He submitted two declarations from acquaintances who do not state in their declarations that they personally know that the applicant resided in the United States during the requisite period. Declarant [REDACTED] indicates that the applicant was visiting New York in spring of 1982 when the applicant indicated on his Form I-687 that he resided in New York from 1981 until 2000. Neither declarant [REDACTED] or declarant [REDACTED] state the frequency with which they saw the applicant during the requisite period except to say that they saw him briefly in 1982, for one week and at one party respectively. Therefore, the applicant has failed to submit evidence other than his own testimony that he resided continuously in the United States from 1982 until the end of the requisite period. The applicant's own unsigned declaration does not state that the applicant resided in the United States during the requisite period. None of the declarations submitted by this applicant is sufficiently detailed to allow the applicant to meet his burden of proof.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 sufficiently detailed, 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