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**U.S. Citizenship
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Services**

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FILE: [REDACTED]
MSC-05-174-11053

Office: NEW YORK

Date: JUL 11 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:

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 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, through counsel, the applicant asserts that due weight was not accorded to the witness affidavits which testify to his presence in the United States since prior to January 1, 1982.

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.

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 Supplement to Citizenship and Immigration Services (CIS) on March 23, 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 first address in the United States to be in Bronx, New York from July 1981 to June 1989. Similarly, at Part #33, he indicated that he was self employed as a vendor from July 1981 until June 1999.

In support of his eligibility, the applicant submitted the following documentation:

1. A declaration from [REDACTED], who states that she has known the applicant since 1982 when he was working as a street vendor in Bronx, New York. In response to the director's request, the declarant has provided a copy of her US passport as evidence of her identity and presence in the United States during the relevant period. However, the declarant does not indicate under what circumstances she met the applicant in 1982, how she dates her acquaintance with the applicant, or how frequently she had contact with him. Given these deficiencies, this statement has minimal probative value in supporting

the applicant's claim that he entered the United States in 1981 and resided continuously in the United States throughout the statutory period.

2. A notarized declaration from [REDACTED] who indicated that he has known the applicant since 1983 when the applicant was living in Bronx, New York. The declarant also submitted various documents to establish his presence in the United States during the relevant period. The declarant did not state with any specificity where he first met the applicant, how he dates his acquaintance with him, or whether he has direct, personal knowledge of the applicant's continuous residency in the United States from 1983 throughout the remainder of the requisite period. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarant's claim to have a friendship with the applicant spanning 22 years. For these reasons, this declaration has very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.
3. A letter dated December 14, 2005 from [REDACTED] and [REDACTED]. The declarant's indicate that they have known the applicant since February 1999. While they have submitted voluminous evidence of their relationship with the applicant including photographs and letters, their relationship is outside of the statutory period and thus can be afforded no weight as evidence of the applicant's residence in the United States for the duration of the requisite period.
4. A notarized letter from [REDACTED] date December 31, 2006. Ms. [REDACTED] indicated that she met the applicant through the applicant's work with fabrics and ancient artifacts of Mali. She does not indicate when she met the applicant, or how long she has known him. She provides no further details of the applicant's entry to the United States or continuous residency in the United States during the statutory period. For this reason, her statement will be given no weight.

The director denied the application for temporary residence on September 25, 2006. The director acknowledged the additional affidavits submitted, but found that given the paucity of evidence in the record, the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. The director also noted that during the interview of September 25, 2006, the applicant stated that he did not leave the United States after his initial claimed entry until 1999. On Part #32 of the legalization application, applicants were asked to list all departures from the United States since entry. The applicant indicated that his only departure was in February 1999 to the Ivory Coast.

This fact detracts from the legitimacy of the applicant's answer to question #1 on the Form I-687 supplement, CSS/Newman LULAC class membership worksheet. In this question, the applicant indicated that he visited an office of INS or a qualified designated entity and that he was turned away from filing the legalization application because he was found to have traveled outside the United States either after November 6, 1986 without advance parole or he had traveled outside

the United States and returned after January 1, 1982 with a visa or travel document. Thus, the applicant's claims of being turned away for traveling during the statutory periods are weakened by his admissions that he did not travel outside the United States until 1999. In the Notice of Denial the director noted this fact. He then went on to adjudicate the case on its merits. Thus, while the class membership of the applicant was questioned in the decision, the director appropriately treated the applicant like a class member and based his decision on the applicant's failure to establish continuous residency for the requisite period, not failure to establish class membership.

On appeal, counsel asserts that the affidavits are credible and that "due weight was not accorded the witness affidavits which testify to [the applicant's] presence in the United States since before January 1, 1982."

Upon review, counsel's assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1983 or later. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 reliance upon affidavits with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.