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FILE: [Redacted]
MSC-06-031-11351

Office: MOUNT LAUREL

Date: **JUL 18 2008**

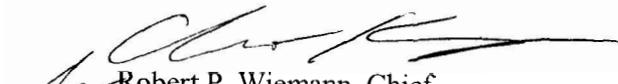
IN RE: Applicant: [Redacted]

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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, Mount Laurel. 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 failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods. Specifically, the director noted that the applicant had submitted evidence of his residence in the United States since August 18, 1984, but had very little evidence to support his claim of unlawful residence from prior to January 1, 1982 up to August 18, 1984.

On appeal the applicant, through counsel, disputes the director's decision and states that he provided sufficient evidence of his continuous residence throughout the requisite period. The applicant has not provided additional documentation in support of his appeal.

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 applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 31, 2005. At part #30 of the I-687 application, where applicants were asked to list their residences in the United States since their first entry, the first period of residence listed by the applicant began in November of 1981. The first period of employment listed by the applicant, at part #33 of the I-687 application, also began in 1981. The applicant also submitted a statement in which he claims to have entered the United States, without inspection, on November 2, 1981.

The applicant submitted the following documentation in support of his claim of residence in the United States since prior to January 1, 1982:

- Statement of [REDACTED] dated December 13, 2005. The declarant states that he has known the applicant since childhood and that the applicant came to the United States in 1981. The declarant does not explain the basis of his knowledge, and does not provide any details of his relationship with the applicant such as how he dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. Given the lack of detail, this statement has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Statement from [REDACTED], the applicant's father, signed and dated December 5, 2005. The letter states that the applicant "had to leave to earn a living in the USA on 11/02/1981." The declarant does not claim to have personal knowledge of the applicant's residence during the requisite period, and the statement lacks any details that would indicate that the declarant has such knowledge. Given the lack of detail, this statement has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains a copy of an I-94 Departure Record for the applicant which bears an admission stamp dated August 18, 1984 as well as a number of other documents—all dated after August 18, 1984—that tend to show the applicant's residence in the United States since that date. Those documents include copies of applications for the transfer of funds and a record of convictions from the New York State Department of Motor Vehicles.

The burden is on the applicant to prove his residence in the United States throughout the entire requisite period. 8 C.F.R. § 245a.2(d)(5). The applicant has submitted only two statements to prove his residence from 1981 until 1984. As noted above, the affidavits are of minimal probative value.

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 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 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.