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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEWARK Date: **JUL 23 2008**
MSC 06 039 13528

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. 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.

Handwritten signature of Robert P. Wiemann in black ink.

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, Newark, 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, on November 8, 2005. The applicant was interviewed on November 6, 2006 in connection with his Form I-687. The director denied the application on November 29, 2006 and mailed the decision on December 14, 2006. On appeal, the applicant submits a brief statement.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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. See 8 C.F.R. § 245a.2(d)(6).

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 petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on June 5, 1989. The applicant listed his addresses for the pertinent time period as: [REDACTED] Elmhurst, New York from November 1981 to March 1986; and [REDACTED] Bergenfield, New Jersey from May 1986 to October 1992. The applicant listed his employment for the pertinent time period as "various" jobs in Elmhurst, New York as a handyman from November 1981 to March 1986. The applicant listed an absence from the United States since his initial entry in March 1986 to May 1986.

The record includes the following documentation regarding the applicant's location during the pertinent time periods:

- An October 18, 2005 affidavit signed by [REDACTED] who declares that she is the applicant's sister and that the applicant resided with her in Bergenfield, New Jersey, from May 1986 to October 1992; a second October 18, 2005 affidavit signed by [REDACTED] wherein [REDACTED] lists the applicant's addresses from May 1986 to present.
- An October 18, 2005 affidavit signed by M [REDACTED] who declares that the applicant is a close family friend and that the applicant resided with him in Elmhurst, New York from November 1981 to March 1986; a second October 18, 2005 affidavit wherein the affiant lists the applicant's addresses from November 1981 to present.

The record also includes the applicant's social security statement of earnings listing the applicant's social security earnings from 1989 to 2004.

On November 29, 2006, the director denied the application, determining that the applicant did not establish that he continuously resided in an unlawful status, or have physical presence during the required period.

On appeal, the applicant provides a statement wherein he indicates: that he entered the United States illegally in November of 1981 through the border at Toronto, Canada; that he lived in New York from November 1981 to March 1986; that he left the United States on March 20, 1986 for the Philippines using a travel document, and returned to the United States on May 2, 1986; that he continued to reside in the United States in various places until settling in New Jersey; and that he left the United States again in April 1989 because of a death in his family and returned to the United States on June 5, 1989 with a visitor visa under an assumed name.

The record in this matter contains only the applicant's statement and the affidavits submitted by two individuals. The four affidavits submitted by these two individuals do not contain details of how the affiants and the applicant first met in the United States and do not provide corroborating evidence of the applicant's stay with the affiants. The record does not contain any evidence of the applicant's employment history during the requisite time period or any other corroborating evidence demonstrating the applicant's residence in the United States during the requisite time period. The applicant has not submitted the travel document used to leave the United States in March 1986 and has not offered evidence or information regarding the visitor visa used to re-enter the United States in June 1989.

The AAO has reviewed the entire record in this matter and does not find that the applicant has established his entry into the United States prior to January 1, 1982 and continuous residence for the applicable time period. 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. The statements and affidavits lack credibility and probative value for the reasons noted. Given the lack of evidence and probative documentation corroborating the applicant's claim of continuous residence for the requisite period it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.