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**U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES Date: **JUL 23 2008**
MSC-05-007-10312

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.


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, Los Angeles. 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, the applicant stated that all his documents were lost when he first tried to apply for amnesty and that he has been residing in the United States since his entry in 1980. The applicant also provided additional documents in support of his application.

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).

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 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 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 October 7, 2004. 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], Bakersfield, California from 1980 to November 1985; and [REDACTED], Maywood, California from December 1985 to December 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided tax documents. He submitted a copy of his Form W-2 Wage and Tax Statement for 1988. This document lists the applicant's name but provides the following address: [REDACTED] Los Angeles, California. This address is inconsistent with the information provided on the applicant's Form I-687 application, where he indicated that he resided at the [REDACTED] address throughout 1988. The applicant also provided copies of his Form 1040 U.S. Individual Income Tax Return for the years 1987 and 1988 including address information that is consistent with the applicant's address as listed on his Form I-687 application. These tax returns

constitute some limited evidence that the applicant resided in the United States at some time in 1987 and 1988.

In denying the application the director noted 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.

On appeal, the applicant stated that all his documents were lost when he first tried to apply for amnesty and that he has been residing in the United States since his entry in 1980. On appeal, the applicant also submitted additional statements in support of his application.

The applicant provided declarations from [REDACTED] and [REDACTED]. Neither of these documents specifically states that the applicant resided in the United States during the requisite period. Therefore, they will be given no evidentiary weight.

The declaration from [REDACTED] states that the declarant met the applicant in 1980 when the applicant resided in East Los Angeles. The declarant stated that he was the applicant's best man in his wedding in 1987. This declaration does not confirm that the applicant resided in the United States at any time other than in 1980. In addition, it fails to provide detail regarding the declarant's frequency of contact with the applicant, or any times the applicant was absent from the United States during the requisite period. Due to these deficiencies, this declaration will be given only limited weight in determining whether the applicant has established that he resided in the United States throughout the requisite period.

The declaration from [REDACTED] and [REDACTED] states that the applicant came to the United States in 1980 and was the declarants' neighbor. The declaration indicates that [REDACTED] was the best man in the applicant's wedding. This information appears to be inconsistent with the declaration from Mr. [REDACTED], where he indicated that he was the applicant's best man. The declaration from Mr. and [REDACTED] fails to indicate that that the applicant resided in the United States at any time other than in 1980. In addition, it fails to provide detail regarding the declarants' frequency of contact with the applicant, or any times the applicant was absent from the United States during the requisite period. Due to these deficiencies, this declaration will be given only limited weight in determining whether the applicant has established that he resided in the United States throughout the requisite period.

In summary, the applicant has provided contemporaneous evidence of his residence that is inconsistent with other documents in the record or only relates to the years 1987 and 1988. He has provided attestations that fail to indicate he resided in the United States during the requisite period, are inconsistent with each other, or lack sufficient detail. 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 contradiction between the applicant's Form I-687 application and the documents he submitted,

and given his 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.