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**U.S. Citizenship
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FILE: [REDACTED]
MSC-06-096-12240

Office: COLUMBUS

Date: JUL 23 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:

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 if your case was 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, Columbus. 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.

The applicant represents himself on appeal. The applicant requests that he be given another opportunity to substantiate his claim of entry and residence for the requisite period of time. The applicant also requests that the immigration officers “reconsider [his] application”, explaining that the language barrier hindered his ability to retrieve and submit the necessary supporting documentation.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 January 4, 2006. 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 as the Parkville Hotel in New York, NY, from March 1980 to February 1990. Similarly, at part #33, he stated that he was self-employed as a “vendor” in New York City from March 1980 to February 1990.

The applicant submitted no other documentation in support of his application for temporary residence. On January 31, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any documentation beyond his own assertions that he met the requirements for eligibility pursuant to the terms of the settlement agreements. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

In response, the applicant submitted a notarized declaration from [REDACTED], dated November 3, 2005. Mr. [REDACTED] states therein that he is the General Manager of the Parkview Hotel, located at 55 West 110th Street, New York, NY. Mr. [REDACTED] also avers that the applicant resided at the Parkview Hotel from 1981 to 1995 at Apt. 2G5. Mr. [REDACTED] states further that he is very good friends with the applicant. At his interview conducted on September 8, 2006, the applicant confirmed, with the assistance of a translator, that he once resided at the Parkview Hotel.

The AAO notes that Mr. [REDACTED] does not state with any specificity where he first met the applicant, how he dates his acquaintance with him, or how he has direct, personal knowledge of the address at which the applicant was residing from the time he dates his acquaintance in 1981. The affiant claims to be the General Manager of the hotel where the applicant resided for 14 years, yet the evidence of record does not include any documentary evidence, such as rent receipts, or rental agreements, to corroborate both the applicant's and Mr. [REDACTED]'s assertion that the applicant resided at the Parkview Hotel for 14 years. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarant's claim to being the General Manager of the hotel where the applicant resided for many years. For these reasons, the declaration from Mr. [REDACTED] 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.

The director denied the application for temporary residence on September 29, 2006. In denying the application, the director found that the affidavit submitted in response to the NOID was insufficient to overcome the grounds for the denial of the application. Specifically, the director concluded that the applicant failed to provide credible evidence that he entered the United States before January 1, 1982 and that he was continuously physically present in the United States for the requisite period of time.

On his Notice of Appeal (Form I-694), the applicant requested additional time to provide further supporting evidence. To date, the AAO has received no additional evidence from the applicant. The AAO agrees that the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the affidavit noted above. The affidavit lacks credibility and probative value for the reasons noted.

Given the lack of credible supporting documentation, it is concluded that the applicant 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.