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U.S. Citizenship  
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[Redacted]

FILE: [Redacted]  
MSC 05 159 11427

Office: NEWARK

Date: **JUL 30 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 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, Newark, and 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. Although the director denied the application, in part, based on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

On appeal, the applicant reasserts his claim that he is eligible for temporary resident status and disputes the director's adverse finding with regard to the sufficiency of the supporting evidence previously submitted.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 during the requisite time period. In the present matter, the applicant has not met this burden.

The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the relevant time period:

1. A notarized letter dated November 15, 2005 from the secretary's office at [REDACTED]. The letter indicates that the applicant attends the temple's Friday afternoon services. However, this letter is unsigned and contains no name to indicate its author. It is unclear why the notary would affix his stamp and signature on an unsigned document whose author is not identified. This considerable deficiency causes the AAO to question the validity of this document. Furthermore, even if the document's validity were not in question, the statements contained therein make no mention of the applicant's residence during the statutory period nor is there any mention of whether the applicant attended service at this temple during the statutory period. Lastly, the applicant made no mention of his membership or affiliation with [REDACTED] in No. 31 of his Form I-687 application. Accordingly, due to the various deficiencies cited herein, the AAO concludes that this document lacks probative value and will not be relied upon as a determination of the applicant's U.S. residence during the statutory period.
2. An affidavit dated March 9, 2006 from an individual who identifies himself as [REDACTED] and also as [REDACTED] who claimed to have known the applicant for over 25

years. The affiant claimed that he had been meeting and doing business with the applicant since 1981 and attended African festivals "in much of the eastern parts of the states." The affiant did not identify any specific dates or places of the festivals, nor did he provide any information as to the frequency of his meetings with the applicant or the nature of the business that was purportedly conducted during the alleged meetings. In general, the affiant provided no details regarding the specific circumstances of the applicant's residence in the United States during the statutory period. Accordingly, this affidavit's lack of probative value precludes the AAO from relying on this document as evidence of the applicant's residence in the United States during the relevant time.

3. **An affidavit dated March 8, 2006 from [REDACTED]**, stating that he met the applicant in 1981 and that he and the applicant sold merchandise together on the corner of 50<sup>th</sup> St. and 7<sup>th</sup> Avenue. Aside from this general statement and an attestation to the applicant's strong work ethic, the affiant provided no information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As this affiant has failed to provide sufficient detail to lend credibility to his claimed 25-year relationship with the applicant, his statement will only be afforded minimal evidentiary weight.

On July 28, 2007, the director issued a notice of intent to deny (NOID), informing the applicant that the documentation he had submitted to support his claim of residence in the United States during the statutory period was insufficient to establish eligibility for temporary resident status. More specifically, the director observed that the affidavit discussed in No. 3 above did not contain an actual signature from the affiant, but rather contained a misspelled printing of the affiant's name. The director based this observation on a comparison of the affidavit and the affiant's identification documents, which contained the affiant's photograph and signature. While the AAO finds that the director's comments were not without merit, an official adverse finding regarding the authenticity of the affiant's signature must be made on the basis of a forensic analysis, which in the present matter has not been conducted. As such, the AAO lacks sufficient basis upon which to make a conclusion as to the validity of the signature contained in this affidavit. Regardless, as thoroughly discussed above, the primary flaw in [REDACTED]'s affidavit is its lack of probative value, which precludes the AAO from affording this document evidentiary weight in this proceeding.

Additionally, the director noted that service records show [REDACTED] (whose affidavit is discussed in No. 2 above) as having resided in Ohio since his entry into the United States. The director therefore questioned how this affiant could attest to the applicant's continuous residence in the United States during the statutory period when the applicant has claimed that he resided in New Jersey.

In response to the director's adverse findings, the applicant provided a letter dated August 28, 2006 in which he addressed the latter of the director's two adverse findings. Specifically, the applicant claimed that [REDACTED] residence in Ohio did not preclude him from knowing the applicant and the applicant's U.S. residence during the statutory period. However, the applicant did not provide any further insight into [REDACTED] claim that he and the applicant did business together during the relevant time; he did not explain the nature of the business he purportedly conducted with the affiant; and he did not

explain how he met the affiant, a factor of considerable importance given that the two men never lived in the same state. The applicant's explanation, much like [REDACTED]'s statement itself, lacks probative value and does not overcome the director's adverse finding. The applicant provided no further supporting documentation to lend credibility to his claim that he resided in the United States during the statutory period.

On September 29, 2006, the director denied the application, concluding that the applicant failed to overcome the adverse findings previously cited in the NOID.

On appeal, the applicant disputes the director's finding regarding the affidavit of [REDACTED], stating that the director "drew a hasty and subjective conclusion" with regard thereto. However, as previously stated, even if the authenticity of [REDACTED]'s signature had not been in question, the mere fact that the affidavit lacks probative value would preclude this document from being relied upon as evidence of the applicant's residence in the United States during the statutory period.

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. As previously stated, 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). 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 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-*, 20 I&N Dec. 77. 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.