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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] MSC 05 162 12514

Office: NEW YORK

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-REPRESENTED¹

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

The record shows that [REDACTED] provided a Form G-28, Notice of Entry of Appearance as an Attorney or Representative. However, on May 7, 2008, [REDACTED] was suspended from practicing law before the Department of Homeland Security. Therefore, while the AAO will consider any and all of [REDACTED] submissions in this matter, the applicant will be considered self-represented and a copy of this decision will be mailed to the applicant only.

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, New York, 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. Specifically, the director noted that the applicant admitted to having at least one prolonged absence of longer than the permitted 45 days within the statutory period and failed to reveal other absences, which the director stated were implied based on the dates of birth of the applicant's children, who were born abroad. The director also noted that information provided by the applicant in Form G-325A suggested that the applicant had not commenced his alleged residence in the United States prior to January 1, 1982. 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 explained the various discrepancies by stating that his friend, who assisted him with completing the Form I-687, made mistakes and provided information different from what the applicant had intended.

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. Here, the applicant has failed to meet this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687, purportedly in 1987, and subsequently filed a Form I-485 seeking permanent resident status under the Legalization Immigration Family Unity (LIFE) Act. 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. An affidavit dated February 11, 2005 from [REDACTED] who provided the applicant's current residential address and stated that he had known the applicant for 24 years. The affiant claimed that he met the applicant in December 1981 when the applicant was living in Brooklyn, New York. The affiant also claimed that the applicant attempted to file his legalization application, which was refused by a service officer. The affiant did not, however, provide the basis for this knowledge, nor did he provide any information about the events and/or circumstances of the applicant's residence in the United States during the

statutory time period. As such, this statement will only be afforded minimal evidentiary weight.

2. Two affidavits dated February 7, 2005 from [REDACTED] respectively. Both affiants claimed to have lived with the applicant when the applicant first arrived to the United States in December 1981. Both affiants claimed that the applicant departed the United States for about two and a half months in March 1983 to see his sick daughter. [REDACTED] specified that the applicant's daughter was about two months old at the time. It is noted that both affiants reiterated the applicant's residential and employment information as it was found in Nos. 30 and 33 of the Form I-687, respectively. However, neither affiant indicated that the applicant had departed the United States prior to March 1983, thereby leaving unanswered the question of how the applicant could have fathered a child who was only two months old in March 1983 if he had continuously resided in the United States since December 1981 as both affiants and the applicant (in No. 32 of Form I-687) claimed. The veracity of both affiants' statements further come into question when compared with the information provided by the applicant in his Form G-325A, dated December 5, 2001, where he claimed that he lived in Bangladesh from the time he was born until November 1984. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of the considerable anomalies discussed herein, both affiants' statements will only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
3. An affidavit dated February 5, 2005 from [REDACTED] who claimed that he had known of the applicant's residence in Brooklyn, New York since December 1981. Although this affiant attested to the applicant's good moral character and work ethic, he did not provide any information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, this affidavit will only be afforded minimal evidentiary weight in this proceeding.
4. An affidavit dated February 13, 2005 from [REDACTED] who claimed that he first met the applicant in December 1981 when he went to visit his friends [REDACTED] and [REDACTED] at their residence located at [REDACTED]. It is noted that this affiant made no indication that he knew of the applicant's residence with Mr. [REDACTED] nor did this affiant provide any other information about the applicant's residence in the United States during the statutory period such as to lend credibility to his alleged 24-year friendship with the applicant. As such, this affidavit will only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

Additionally, the record contains a statement from the applicant provided in connection with his LIFE Act application, dated September 17, 2002, where the applicant claimed that he has resided in the United States since November 17, 1986. The applicant claimed that he entered the United States through the Bahamas and went directly to California to work in agriculture. He further stated that he came to New York in April 1987 and started working as a painter in the construction industry. This statement further undermines the probative value of the statements provided by all of the affiants in Nos. 1-4 above, as well as the claims brought forth by the applicant in his Form I-687 application. As previously stated, such inconsistencies must be addressed and resolved with documentary evidence, which in the present matter has not been provided. *See id.*

While the applicant claims on appeal that any anomalies in his application are due to the assistance of a third party, the applicant is reminded that he signed his Form I-687 under the penalty of perjury, thereby giving reasonable assurance that he reviewed the information for accuracy prior to signing it. As such, the applicant's explanation on appeal is without merit and is insufficient to overcome the inconsistencies cited above.

In summary, the applicant has provided deficient affidavits, which are inconsistent with information he previously provided in connection with his LIFE Act application.

The absence of probative and credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies described above, 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 contradictory statements on his applications and 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 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.

Additionally, an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

As discussed by the director, the applicant in the present matter has provided information that indicates a prolonged absence from the United States. Specifically, No. 32 of the Form I-687 shows that the applicant departed the United States in March 1983 and returned to the United States in May 1983, which is a prolonged absence lasting beyond the time period specified in 8 C.F.R. § 245a.1(c). The applicant indicated that the reason for his absence was to visit his sick child. However, the applicant has provided

no evidence in support of this claim. As such, the applicant has failed to establish that the absence was prolonged due to an emergent reason, which suddenly came into being. *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988). Therefore, even if the applicant were to have successfully established his entry into the United States since prior to January 1, 1982, his prolonged absence would have interrupted the continuous residence he may have accrued prior to that absence.²

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Accordingly, the applicant is ineligible for temporary resident status on the basis of the additional ground discussed above.

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

² The applicant further stated in No. 32 of the Form I-687 that he had another prolonged absence to see his family from August 1984 to November 1984. This absence also cannot be deemed as one that was prolonged by an emergent reason. While not specifically addressed by the director, this absence would also serve to interrupt any continuous residence that may have accrued up to that point.