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U.S. Citizenship
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[Redacted]

FILE:

[Redacted]

Office: NEW YORK Date:

MSC-05-329-11124

JUN 04 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:

[Redacted]

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 Records 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, New York. 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 failed to timely respond to the Notice of Intent to Deny (NOID) and denied the application for the reasons contained in the NOID. Specifically, the director found that the applicant had failed to prove by a preponderance of the evidence that he 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 under this section.

On appeal, counsel for the applicant indicated that the applicant had timely responded to the NOID.

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 August 25, 2005. 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 only the following address: [REDACTED], Bronx, New York from November 2002 to present. The applicant's failure to list any places of residence in the United States prior to 2002 casts significant doubt on his claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence during the requisite period, the applicant initially provided only one affidavit. The affidavit from [REDACTED] states that the affiant has known the applicant since he entered the United States in 1981. The affidavit states that the applicant used to come to the affiant's house every weekend. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period, except for some portion of 1981. In addition, this affidavit fails to provide detail regarding the applicant's dates and region of residence during the requisite period, the affiant's frequency of contact with the applicant, and any times that the applicant was absent from the United States during the requisite period. The affidavit also fails to provide detail regarding how the affiant met the applicant. This is particularly

significant because the affiant and the applicant share a last name and, therefore, appear to be related. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. In addition, the record of the applicant's interview with an immigration officer on December 27, 2007 indicates that the applicant stated that he met the affiant in 1990. This information conflicts with the affiant's statement indicating she met the applicant in 1981 and casts doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant provided additional evidence in response to the NOID issued by the director. The affidavit from [REDACTED] states that he has known the applicant since 1981 when he worked with the applicant's mother, and they have been good friends ever since. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period, except for some portion of 1981. In addition, this affidavit fails to provide detail regarding the applicant's dates and region of residence during the requisite period, the affiant's frequency of contact with the applicant, and any times that the applicant was absent from the United States during the requisite period. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to prove by a preponderance of the evidence that he 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 under this section.

On appeal, counsel for the applicant indicated that the applicant had timely responded to the NOID. It is noted that the record indicates the NOID was issued on January 23, 2008 and the applicant was provided with 30 days in which to respond. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b). Therefore, service of the NOID was completed on January 23, 2008, and the applicant had until February 25, 2008 to respond. The record indicates that the applicant's response to the NOID was received on February 27, 2008. Therefore, the director did not err in finding that the response to the NOID was untimely submitted.

In summary, the applicant has submitted attestations from only two people concerning the requisite period. The affidavits from [REDACTED] and [REDACTED] both fail to state that the applicant resided in the United States during the requisite period except during 1981 and lack sufficient detail to confirm the applicant's residence during this period. The affidavit from [REDACTED] also conflicts with the applicant's statements in his interview with an immigration officer. The applicant provided no other evidence in support of his application for temporary resident status.

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 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 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.