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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
MSC-05-263-13262

Office: NEW YORK

Date: **JUN 11 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 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, 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 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 stated in her Notice of Intent to Deny (NOID), issued on January 24, 2006, that the applicant was not able to provide details regarding a departure from the United States during the requisite period at the time of a 1994 interview with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS). She went on to say that the affidavits the applicant submitted in support of his application lacked credibility. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In her decision, issued on September 24, 2006, the director noted that her office received evidence from the applicant in support of his application, but stated that this evidence was not sufficient to overcome her reasons for denial as described in her NOID. Therefore, the director denied the application.

The AAO notes that though the director raised the issue of class membership in the decision, the application was considered on the merits. Therefore, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant submits an affidavit in support of his application. He also resubmits previously submitted evidence.

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)(1).

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 or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 20, 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in Brooklyn, New York from September 1981 until March 1986; and [REDACTED] in Brooklyn, New York from April 1986 until November 1994. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent once during the requisite period when he went to Canada for a visit from July to August 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was employed by Deluxe Home Improvements, a General Contractor located at 182 Forbel Street in

Brooklyn from November 1981 until August 1987 and then for MIR Construction located at 301 Harmen Street in Brooklyn from August 1987 until October 1989.

Also in the record is a photocopy of a Form I-687 submitted by the applicant to establish class membership. The applicant signed this Form I-687 on February 25, 1993. Here, the applicant listed his addresses of residence, his absences from the United States and his places and dates of employment consistently with what he showed on his subsequently filed Form I-687.

Further in the record is a document that states that on May 2, 1994 an INS immigration officer found that the applicant failed to prove that he was a CSS Class member. Here, that officer indicated that the applicant was unable to provide sufficient details regarding his alleged departure from the United States during the requisite period. Notes in the record also indicate that when asked why he did not apply for legalization during the original filing period, the applicant indicated that he was afraid to do so.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted the following documents as proof that he resided in the United States for the duration of the requisite period:

Affidavits and declarations:

1. A photocopy of a notarized affidavit from [REDACTED] that is dated February 10, 1993 and was notarized October 31, 1994. This affiant states that the applicant resided with him from September 1981 until March 1986 at [REDACTED] in Brooklyn, New York. Here, though [REDACTED] states that all rent receipts and household bills were in his name, he did not submit any such documents with his affidavit. Because of its significant lack of detail, this affidavit is accorded minimal weight as proof that the applicant resided in the United States from 1981 until 1986.
2. An affidavit from [REDACTED] that is dated February 25, 1993. This affiant states that the applicant resided with him at [REDACTED] in Brooklyn, New York from March 1986 through the end of the requisite period. Here, though [REDACTED] states that all rent receipts and household bills were in his name, he did not submit any such documents with his affidavit. Mr. [REDACTED] failed to indicate whether there were periods of time during

the requisite period when he did not see that applicant. He further failed to state how and where he met the applicant. Because of its significant lack of detail, this affidavit is accorded minimal weight as proof that the applicant resided in the United States from March 1986 until the end of the requisite period.

3. An affidavit from [REDACTED] that was notarized on March 15, 1993. In this affidavit, the affiant states that he has personal knowledge that the applicant resided in Brooklyn for the duration of the requisite period. Here, though the affiant indicates he met the applicant at a social function, he fails to indicate when he met the applicant or whether it was in the United States. He does not indicate whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this affidavit is accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
4. An affidavit from [REDACTED] that was sworn to on April 6, 1993. In this affidavit the affiant states that the applicant visited him in Canada from July 7, 1987 until August 4, 1987. Here, the affiant does not state how he met the applicant. He does not indicate how he can recall the exact dates of the applicant's visit. Further, he does not state that he personally knows that the applicant was residing in the United States during the requisite period.
5. An updated declaration from [REDACTED] that is dated October 15, 2005. He submits a photocopy of the title page of his Canadian passport # [REDACTED] as proof of his identity. In this statement, the declarant states that he has known the applicant since 1983 and states that the applicant visited him in July and August of 1987. Here, the affiant does not state how he met the applicant. Again, he does not state that he knows that the applicant resided in the United States during the requisite period.
6. An affidavit from [REDACTED] that is notarized and is dated October 19, 2005. The affiant submitted a photocopy of the title page of his passport as proof of his identity. In his affidavit, [REDACTED] states that he has known the applicant since September 1981. He states that he first met him at Donut World at 7 Train Main Street Stop in Flushing, New York. He states that both he and the applicant worked at Donut World for a few weeks. It is noted here that the applicant did not indicate that he worked at Donut World on his Form I-687. This affiant does not indicate the frequency with which he saw the applicant in the United States during the requisite period. Because this affidavit contains an inconsistency regarding the applicant's pace of employment during the requisite period and because it is lacking in detail, this affidavit can be accorded minimal weight in establishing the applicant's residency in the United States during the requisite period.
7. An affidavit from [REDACTED] that is notarized and is dated October 19, 2005. The affiant provides a photocopy of his Certificate of Naturalization and a photocopy of his passport as proof of his identity. Here, the affiant states that the applicant visited him at his apartment in Bronx, New York in 1984 when the affiant first came to the United States. The affiant fails to state how and under what circumstances he met the applicant and the frequency of their contact during the requisite period. Because this affidavit is

lacking in detail, it is afforded little weight as proof that the applicant resided in the United States from 1984 until the end of the requisite period.

Employment Verification Letters:

Here, the AAO notes that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

8. A photocopy of a letter from MIR Construction that is dated March 18, 1993 that states that the applicant is personally known to the manager of the company. It goes on to say that the applicant was working for the company from August 1987 until October 1989. The signature on this letter appears to read "[REDACTED]" Here, the author of the letter does not indicate how he can verify these dates of employment or whether the information regarding those dates came from official company records. Because this employment verification letter is lacking with regards to the requirements for such letters found in the regulation at 8 C.F.R. § 245a.2(d)(3)(i), little weight can be given to this letter as proof of the applicant's residence in the United States from August 1987 until the end of the requisite period.
9. A notarized letter from Deluxe Home Improvements that is dated March 18, 1993. This letter is signed by the manager whose name is not legible and states that the applicant was employed by him from November 1981 until August 1987 as a helper. The author of this letter does not indicate whether the information regarding the applicant's dates employment is from official company records or how he can otherwise confirm the applicant's start and end dates with the company. Because this employment verification letter is lacking with regards to the requirements for such letters found in the regulation at 8 C.F.R. § 245a.2(d)(3)(i), little weight can be given to this letter as proof of the applicant's residence in the United States from November 1981 until August 1987.

The director issued a Notice of Intent to Deny (NOID) to the applicant on January 24, 2006. In her NOID, the director stated that the applicant did not demonstrate that he was eligible to adjust status to that of a temporary resident for the following reasons:

1. Though the applicant stated that he departed the United States in July of 1987 for a visit to Canada, his testimony at the time of his May 2, 1994 interview with an officer did not establish that he was absent from the United States at that time.

2. The four affidavits submitted by the applicant are not sufficient evidence to prove by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period. The director specifically mentions an affidavit from [REDACTED] that is dated October 19, 2005. She states that the affiant claimed to have met the applicant in 1981 at Donut World in Flushing, New York while they both worked there. Here, the director asserts that Service records indicate that [REDACTED] did not enter the United States until 1984. She goes on to say that this indicates this affidavit is not credible. The AAO again notes here that the applicant did not indicate that he worked for Donut World on his Form I-687.

The director stated that the affidavits submitted by the applicant are not sufficient to allow the applicant to meet his burden because they lack credibility. She goes on to state that credible affidavits are those that include documents identifying an affiant, proof that an affiant was in the United States during the statutory period, evidence that there was a relationship between the applicant and the affiant and a working telephone number at which an affiant can be contacted to verify information contained in his or her affidavit. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant requested an extension of time to submit additional evidence. He submitted a statement and previously submitted evidence to show that affiant [REDACTED] was present in the United States prior to January 1, 1982.

Details of the letter, the affidavit and the additional evidence are as follows:

1. A letter from the applicant's attorney that is dated March 16, 2006. This letter asserts that based on the evidence submitted with the appeal and the evidence in the record, the applicant requests a favorable determination of his case.
2. An affidavit from [REDACTED] that was notarized on March 14, 2006. In this affidavit, the affiant asserts that he entered the United States as a seaman in 1978. He goes on to say that he married an American Citizen on July 10, 1981 and that his wife filed a petition for him on July 23, 1981.
3. A photocopy of a petition to classify the status of an alien relative for issuance of an immigrant visa for [REDACTED]. This form is dated July 10, 1981. The form shows that a fee for filing this document was received on July 23, 1981.
4. A photocopy of a letter from [REDACTED], who was a member of the House of Representatives at the time, dated August 10, 1983 that requests the Assistant District Director of Travel Control to look into the status of [REDACTED]'s wife's petition for him.

In her decision, dated September 24, 2006, the director stated that though her office received additional evidence from the applicant in support of his application, this documentation failed to overcome her reasons for denial as stated in her NOID. In her notice of decision she noted the following:

1. The applicant claimed that he entered the United States in 1981 but he furnished no evidence of this entry such as documents showing a valid entry to the United States at that time. Here, the AAO notes that the applicant consistently claimed to have entered the United States without inspection. Therefore, as he did not enter validly, it would not be possible for him to produce a document showing he entered validly.
2. That during the applicant's May 2, 1994 interview he stated that he did not tender an application for the amnesty program because he was afraid<sup>1</sup>. Further, the immigration officer who interviewed the applicant found he was not able to provide details of his absence from the United States in 1987.
3. The record did not contain evidence that Deluxe Home Improvements and MIR Construction were operational during the requisite period.
4. Affiants [REDACTED] and [REDACTED] were not submitted with identity documents.
5. The director noted the affidavit from [REDACTED] was submitted with identity documents and that affiant [REDACTED] submitted identity documents and proof that he resided in the United States since before January 1, 1982.

On appeal, the applicant submits a statement in support of his appeal. He resubmits the new sworn statement from [REDACTED] and evidence that [REDACTED] was present in the United States prior to January 1, 1982.

Details of the new evidence submitted with the applicant's appeal is as follows:

- An affidavit from the applicant that is notarized and is dated October 16, 2006. Here, the applicant refutes his previous statement made on May 2, 1994 that he did not tender an application during the original filing period. He states that he did go to an Immigration office at that time but was turned away and did not insist on filing because he was afraid. He states that he does not know whether Deluxe Home Improvement or MIR Construction were corporations because they were small businesses. He goes on to say that he no longer is in contact with affiants [REDACTED] or [REDACTED].

Here, the AAO again notes that an applicant who entered the United States without inspection would not possess evidence that he or she entered the United States validly. The AAO further notes that neither the Act nor the regulations require applicants to submit proof of identity with their affidavits, nonetheless, the director may ask applicants for such evidence.

However, as noted above, the affidavits submitted by the applicant are significantly lacking in detail such that they cannot be accorded sufficient weight to allow this applicant to establish that he resided continuously in the United States by a preponderance of the evidence. The

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<sup>1</sup> The AAO notes here that the officer's notes from that interview indicate that the applicant stated that he heard that others were turned away and was therefore afraid to file at that time.

employment letters from the applicant do not conform to the specifications found in the regulation at 8 C.F.R. § 254a.2(d)(3)(i). Further, the applicant has submitted an affidavit from [REDACTED] which states that this affiant met the applicant when they were both working at Donut World. However, as was previously noted, the applicant did not indicate he worked at Donut World on his Form I-687.

Here, the inconsistencies noted in the record seriously detract from the credibility of his 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 lack of detail in submitted documents, the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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