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[REDACTED]

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FILE: [REDACTED]
MSC 06 088 11168

Office: ATLANTA

Date: JUN 12 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, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987, to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel asserts that the director did not properly evaluate the applicant's evidence, and disregarded counsel's response to the Notice of Intent to Deny (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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she 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. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. *See* 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 "[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 (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 from prior to January 1, 1982, through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987, to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 December 27, 2005.¹ At block 30 of the Form I-687 application dated December 27, 2005, where applicants are asked to list all residences in the United States since first entry, the applicant stated that he lived at [REDACTED] in Lake Worth, Florida from August 1981 to May 1990. At block 32, where applicants are asked to list all absences from the United States since entry, the applicant stated that his only absence during the requisite period was from December 1982, to January 1, 1983, when he went to Bangladesh to visit his family. In block 33, where applicants are asked to list all employment in the United States since entry, the applicant indicated he worked for M. M. Grocer’s Inc. in Boca Raton, Florida from December 1981 to December 1985, and at Community Grocery in West Palm Beach, Florida from February 1986 to September 1991.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

1. A January 14, 2005, affidavit from [REDACTED], in which he stated that he had known the applicant for 23 years, and that, just before Christmas 1981, he traveled to Florida with his relative, who was also the applicant’s friend. The affiant did not state that he met the applicant at that time and did not otherwise provide information about his initial acquaintance with the applicant. The affiant did not state that the applicant had lived in the United States throughout the requisite period.
2. A January 24, 2002, letter from [REDACTED], in which he stated that he had known the applicant for a long time, and that when the applicant came to the United States in 1981, he called Mr. [REDACTED] a few times and sent him a few cards from Florida. Mr. [REDACTED] stated that he was able to give the applicant information and encouragement about school admissions, as he was a student himself.
3. An undated notarized statement from [REDACTED], in which he stated that he “received” the applicant at the airport in New York in July 1981, and that the applicant stayed with him for a few days before moving to Florida. Mr. [REDACTED] did not identify the airport at which he met the applicant and did not state his relationship with the applicant.

¹ A Form I-687 filed on December 30, 2005, was withdrawn.

4. An affidavit from [REDACTED], in which he certified that he had known the applicant since 1981, and that the applicant was his roommate in different locations in the West Palm Beach area. [REDACTED] stated that the applicant's name was not on the lease or utility bills because he did not have a social security number. The applicant submitted no documentation, such as a lease agreement, utility bills, or similar documentation, to corroborate that either he or [REDACTED] lived at any specific location in West Palm Beach.
5. A September 6, 1991, notarized statement from [REDACTED] who stated that he was the owner of M. M. Grocer's Inc., and that the applicant worked for him as a salesman from December 1981 to December 1985. We note that the applicant stated on his 1991 Form I-687 application that he worked for M& M Grocer's until May 1985. Mr. [REDACTED]'s letter does not contain the information required by 8 C.F.R. § 245a.2(d)(3)(i), in that it does not provide the applicant's address at the time of his employment or whether the information concerning the applicant's employment was taken from company records. The applicant submitted no documentation such as canceled paychecks, pay vouchers, or similar documentation to corroborate his employment with [REDACTED].
6. An undated letter from [REDACTED] in which he certified that he had known the applicant since 1983, and that he visited him many times. Mr. [REDACTED] did not indicate how and under what circumstances he came to know the applicant.
7. A September 2, 1991, notarized statement from [REDACTED] in which he stated that he was the owner of Community Grocery in West Palm Beach, Florida, and that the applicant had worked for him as a salesman since February 1986. Mr. [REDACTED]'s letter does not contain the information required by 8 C.F.R. § 245a.2(d)(3)(i), in that it does not provide the applicant's address at the time of his employment or whether the information concerning the applicant's employment was taken from company records. The applicant submitted no documentation such as canceled paychecks, pay vouchers, or similar documentation to corroborate his employment with [REDACTED].

The applicant also submitted copies of envelopes addressed to him at M. M. Grocery and Community Grocery. The postmarks purport to have cancellation dates of August 17, 1985, and May 9, 1987. However, the years shown in these cancellation dates are smaller than the month and day and are blocked separately, thus raising doubts as to their credibility.

In response to the director's October 2, 2007, NOID, counsel asserted that the director "appears to have made [an] incorrect determination based on a complete disregard of the abundant evidence [the applicant] submitted." The applicant submitted no additional evidence in response to the NOID. On appeal, counsel again asserts that the director disregarded his response to the NOID. Counsel further states that the applicant is unable to provide any government or legal documents to prove his presence in the United States because he was in an unlawful status, and that the director failed to give proper weight to the affidavits submitted in support of the application. Counsel submits no brief or additional documentation in support of his appeal.

The record reveals that the applicant has completed two prior Forms I-687 applications. On a Form I-687 application, which he signed under penalty of perjury on December 10, 1990, the applicant stated that he lived at [REDACTED] in Lake Worth, Florida from August 1981 to May 1990. The applicant also stated that he departed the United States in December 1982 because his mother was ill and returned

in January 1983. This is consistent with the dates he provided on his current Form I-687 application. However, on another Form I-687 application, which he signed under penalty of perjury on September 6, 1991, the applicant stated that he lived at ██████████ West Palm Beach, Florida from July 1981 to August 1985, and at ██████████ Lake Worth, Florida from September 1985 to December 1990. He stated that he left the United States once during the qualifying period, in March 1982 because his mother was ill and returned on April 10, 1982, pursuant to a visitor's visa.

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. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant gave conflicting statements regarding his arrival and subsequent departure from the United States. He has failed to submit any objective evidence to explain or justify these inconsistencies in his statements and those of others who attested to his presence and residence in the United States. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and casts doubt on the credibility of those who submitted affidavits and statements on his behalf.

The statements submitted by the applicant attesting to his employment fail to provide the information required by 8 C.F.R. § 245a.2(d)(3)(i). Additionally, the statements and affidavits from those attesting to the applicant's presence and residence in the United States lack detail to establish the attester's knowledge of the applicant's presence and residence in the United States during the required 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. 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 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-*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The record reflects that the applicant filed a permanent resident status under the Legal Immigration Family Equity (LIFE) Act CIS receipt number MSC 02 169 64602, which was denied by the director on January 26, 2005. The applicant's appeal of that decision is not at issue in this decision.

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