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20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [REDACTED] Office: BOSTON (MANCHESTER) Date: **JUN 12 2008**  
MSC 06 067 13743

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Boston, and that 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. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

On appeal, the applicant argues that USCIS abused its discretion in denying the application and that it "failed to apply the correct preponderance of the evidence standard." The applicant asserts that he has provided sufficient credible, probative evidence to meet the burden of proof.

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 be 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 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. 8 C.F.R. § 245a.2(d)(5).

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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on December 6, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he resided at [REDACTED], Queens, New York from 1981 until 1983; at [REDACTED], Brockton, Massachusetts at some point in 1985; at [REDACTED], Weymouth, Massachusetts, from 1985 until 1987; and at [REDACTED], Burlington, Massachusetts, from 1987 until 1995. There is no mention of an address in the United States between 1983 and 1985.

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). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted the following evidence:

- An affidavit from [REDACTED], the applicant's uncle who indicated that he resided at [REDACTED], Hudson, New Hampshire. The affiant indicated that his nephew, the applicant, entered the United States in 1981 and then lived with him until 1985 when the family moved to Rockland, Massachusetts. He does indicate that he saw the applicant "almost every day," however, he provided no evidence of the fact that they lived together for nearly 18 years, such as a lease, rental receipt, school records, medical records and/or correspondence, which would substantiate his claims.

On September 8, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the applicant's claim that he entered the United States with his father in 1981, but noted that he furnished no evidence of such an entry. The director also noted that during the interview of September 6, 2006, the applicant stated that he did not leave the United States after his initial claimed entry until 1998. On Part #32 of the legalization application, applicants were asked to list all departures from the United States since entry. The applicant indicated that his only departure was in July 1998 for two weeks.

This fact detracts from the legitimacy of the applicant's answer to question #1 on the Form I-687 supplement, SCC/Newman LULAC class membership worksheet. In this question, the applicant indicated that he visited an office of INS or a qualified designated entity and that he was turned away from filing the legalization application because he was found to have traveled outside the United States either after November 6, 1986 without advance parole or he had traveled outside the United States and returned after January 1, 1982 with a visa or travel document. Thus, the applicant's claims of being turned away for traveling during the statutory periods are weakened by his admissions that he did not travel outside the United States until 1998. In the Notice of Denial the director noted this fact. He then went on to adjudicate the case on its merits. Thus, while the class membership of the applicant was questioned in the decision, the director treated the applicant like a class member and based his decision on the applicant's failure to establish continuous residency for the requisite period, not failure to establish class membership.

The applicant requested additional time to respond to the NOID, which was not granted per 8 C.F.R. §103.2(b)(8), and on October 24, 2008, the application was denied. The director found that given the paucity of evidence in the record, the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. While an applicant's failure to provide evidence other than

affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and are not buttressed by any evidence that the affiant actually had personal knowledge of the events and circumstances of the applicant's residence in the United States, or any evidence of the affiants residency in the United States during the statutory period. Overall, the affidavit provided was so deficient in detail that it can be given no significant probative value.

Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to the requisite period, and he has submitted inconsistent testimony and evidence pertaining to his departures from the United States following his initial entry.

On appeal, the applicant submitted one additional piece of evidence, an affidavit from his father, [REDACTED]. The affiant indicated that he entered the United States with his infant son via the Mexican border. While the affiant does state that he has lived continuously with the applicant in the United States since entering in 1981, he has not provided any evidence of his or his son's residency to corroborate his claims. Further, he also stated that he and his son only departed the United States once since their initial entry. This departure was in July 1998 and they reentered the United States on B-2 visas. As stated above, this is inconsistent with the applicant's claims of class membership made on the Form I-687 supplement, SCC/Newman LULAC class membership worksheet.

The only other evidence submitted concerned years following the statutory period of 1982 until 1988 and thus, will not be given any weight.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 affidavits with minimal probative value, and his own inconsistent statements on Forms I-687, 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--*, *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