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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-04-331-10234

Office: BALTIMORE

Date: JUN 19 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, Baltimore. 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. 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, through counsel, asserts that his testimony and documentation warrant an approval of his application.

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 on August 26, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from 1981 until 1988. Similarly, at part #33, he showed his first employment in the United States to be as a self-employed trader in Bronx, New York from 1981 until 1988. Notably, the applicant neglected to specify the dates of his residence and employment during the requisite period. The applicant only provided the years without showing the corresponding months. Dates that show the month and year are requested on the application and are necessary to assess the credibility of the applicant's evidence. The applicant's failure to provide this information draws into question the credibility of his claim of continuous residence in the United States during the requisite period.

In support of his application, the applicant submitted a fill-in-the-blank affidavit from [REDACTED] dated August 8, 2005. This affidavit provides that [REDACTED] has personal knowledge of the applicant's residence during the requisite period in Bronx, New York from August 1981 until June 1988. The affidavit further provides that [REDACTED] is able to determine the date of the

beginning of his acquaintance with the applicant in the United States because the applicant worked as his employee from November 2000 until July 2003.¹ Accordingly, [REDACTED] does not have direct personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On May 8, 2006, the director issued a Notice of Intent to Deny to the applicant. The director found that the applicant failed to submit credible evidence that he resided in the United States during the requisite period. The director determined that the applicant has not provided credible evidence to support his eligibility for temporary resident status. The director afforded the applicant 30 days to submit evidence to overcome the basis for intended denial.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be submitted 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. The applicant failed to furnish any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a notarized letter, dated May 12, 2006, from [REDACTED] with an attached New York State Identification Card.² This letter provides, "I [REDACTED] residing at the above address, attest under [sic] to being aware of the presence in the United States, in late 1981 of [REDACTED] to present. I met him in one of the Store in Harlem New York since that [sic] we became very good friends."³ This letter lacks significant detail on [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. The letter states that [REDACTED] is aware of the applicant's presence in the United States in late 1981. However, it is ambiguous as to whether this is the date that he first became acquainted with the applicant. In addition, the letter does not convey whether [REDACTED] maintained contact with the applicant in the United States during the requisite period. Notably, this letter does not contain [REDACTED]'s phone number to readily verify the content of his statement. Given these significant deficiencies, this letter is without any

¹ The applicant's Form I-687 shows that between 2000 and August 2003 he was employed as a manager at Sunuco Service Center in Chevy Chase, Maryland.

² Although this document is entitled "Affidavit of Witness" it will be referred to as a notarized letter in this proceeding because it is not a sworn statement.

³ The attached identification document indicates that the author's name is, in fact, [REDACTED] r.

probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

On October 30, 2006, the director issued a denial notice to the applicant. The director found that the letter from [REDACTED] was without probative value. The director determined that the applicant failed to provide credible evidence that he has resided in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding, and denied the application.

On appeal, counsel asserts that the applicant's testimony and documentation warrants an approval of the application. Counsel states that the applicant submitted a credible affidavit from [REDACTED] establishing his presence in the United States for the requisite period. Counsel states that the applicant established that he was in an unlawful status. Counsel asserts that the application was not properly considered and should be reviewed and approved.

The applicant submitted the following documentation:

- The applicant's statement, dated November 29, 2006, which provides that his documentation and testimony are credible evidence of his residence in the United States during the requisite period. The applicant states that the letter from [REDACTED] establishes that he has been present in the United States for the required period of time. The applicant further states that his record with the Department of Homeland Security establishes that he has been in an unlawful status. The applicant asserts that the Department of Homeland Security has not given proper weight to his claim. The applicant concludes that the application should have been approved and the decision should be reversed.
- An affidavit, dated December 26, 2006, from [REDACTED] with an attached New York State Identification Card. [REDACTED]'s affidavit provides, ". . . I [REDACTED] currently resides [sic] at the above address, here-in [sic] attest under oath to being aware of the presence in the United States, in late 1981 of [REDACTED] [sic] to present. I met him in one of the African Art and Crafts Store [sic] in Harlem." This affidavit lacks significant detail on [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. As with previous statement, this affidavit provides that [REDACTED] is aware of presence in the United States in late 1981. However, it is ambiguous as to whether this is the date that he first became acquainted with the applicant. In addition, the affidavit does not convey whether [REDACTED] maintained contact with the applicant in the United States during the requisite period. Moreover, the affidavit is suspect because the signature on the affidavit is significantly different than the signature on the previous letter from [REDACTED]. Notably, the affidavit is signed [REDACTED] while the letter is signed "[REDACTED]". It should also be noted that the attached New York State Identification Card shows that Pryor is the affiant's last name while [REDACTED] is his first

name ([REDACTED]). Given the numerous deficiencies, this affidavit is without any probative value and credibility as evidence of the applicant's continuous residence in the United States during the requisite period.

- A notarized letter, dated December 26, 2006, from [REDACTED] with an attached New York State Identification [REDACTED]'s notarized letter provides, "I, [REDACTED] residing at the above address, attest under to being aware of the presence [sic] [REDACTED] in the United States, in late 1981 to present. We met at the move [sic] in New York City since that [sic] we became very good friends." This affidavit lacks significant detail on [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. The letter states that [REDACTED] is aware of the applicant's presence in the United States as of 1981. However, it is ambiguous as to whether this is the date [REDACTED] first became acquainted with the applicant. In addition, the letter does not convey whether [REDACTED] maintained contact with the applicant in the United States during the requisite period. Notably, this letter does not contain [REDACTED]'s phone number to readily verify the content of his statement. Finally, this letter is suspect because the signature on the letter is inconsistent with the signature on [REDACTED]'s New York State Identification Card. Therefore, this letter is without any probative value and credibility as evidence of the applicant's residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant 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.

⁴ Although this document is entitled "Affidavit of Witness" it will be referred to as a notarized letter in this proceeding because it is not a sworn statement.