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U.S. Citizenship
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[Redacted]

FILE: [Redacted]
MSC-05-169-11193

Office: NEW YORK

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 pursuant to 8 C.F.R. §103.2(b)(13), the applicant abandoned his application because he failed to submit additional evidence of his residence in the United States during the requisite period in response to the Notice of Intent to Deny. 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.

According to 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed. However, in this case, the director informed the applicant that he may file an appeal within 30 days to the AAO. Additionally, on appeal, the applicant asserts that he responded to the NOID with additional evidence. Therefore, the specific part of the director's decision denying the application as abandoned shall be withdrawn.

On appeal, the applicant, through counsel, asserts that he has resided in the United States during the requisite period, has submitted sufficient evidence, and is eligible for temporary resident status.

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 March 18, 2005. At part #30 of the Form I-687 application the applicant showed that during the requisite period he resided in the following locations: Woodside, New York from July 1981 until August 1981; New York, New York from August 1981 until April 1985; Ponpano [sic] Beach, Florida from April 1985 until June 1986; New York, New York from September 1986 until December 1987; and Corona, New York from December 1987 until July 1990. At part #33 of the application, he showed his employment during the requisite period as Spanish Delights, Inc., BBQ, Inc. in New York, New York from September 1981 until March 1985; [REDACTED] in Miami, Florida from April 1985

until June 1986; and Tajmahal Restaurant, Inc. in Jackson Heights, New York from September 1986 until December 1988.

The applicant submitted the following documents as evidence of his residence in the United States during the requisite period:

- Copies of numerous photographs with handwritten dates indicating that they were taken during the requisite period. These photographs are not probative evidence of the applicant's residence in the United States during the requisite period. There is no indication that the person featured in the photos is the applicant. Although two of the photos indicate that they were taken in the New York, the remaining photos fail to describe the location of where they were taken. Furthermore, the reliability of the date of these photos is based on the applicant's memory and testimony alone. There is no evidence that the photos were dated stamped upon the date they were taken or developed. Given these numerous deficiencies, these photos are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from [REDACTED], which, in part, provides:

I happen to personally know [REDACTED] since August 1981. I met him at a Hispanic Heritage Parade that was held on 5th Avenue, Manhattan, New York. He was one of the observers like me who was standing aside on the walkway of the 5th Avenue. After some conversations, we exchanged our contact numbers and became friends since then We usually used to get together on every other Sundays, sometimes at his place or sometimes in bars in Corona, Queens, New York. He used to work as a kitchen helper in several restaurants where he treated me many times when I usually visited him at his work places. In 1983, on my birthday, he treated me at an Indian restaurant (he used to work there) named Tajmahal in Jackson Heights, Queens, New York.

This declaration is inconsistent with the applicant's Form I-687. The applicant's Form I-687 shows that he was employed with Tajmahal Restaurant in New York from September 1986 until December 1988. Therefore, the applicant was not employed with the Tajmahal Restaurant in 1983, as inferred by this declaration. Nevertheless, the remainder of the declaration describes [REDACTED]'s relationship with the applicant in the United States during the requisite period. Therefore, this letter has some minimal value as probative evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED] National Council of La Raza, dated May 2, 2002. This letter states:

[REDACTED], an Ecuadorian national . . . became a member of NCLR on 06-21-1985. He is [sic] been involved in commonality development activities with our NYC affiliates since he became a member of NCLR. He has achieved honor to be considered

as one of our finest Social Workers, and NCLR sincerely admits him as one of its most valued members for his long-time contribution for [sic] Hispanic Community in Corona, New York City area since 1985.

There are several apparent deficiencies in this letter. First, the author of the letter, does not list his position title with the NCLR. The letter only indicates that [REDACTED] is with the NCLR New York Chapter. Second, the letter states that the applicant has been involved with “commonality development activities” without providing any examples of such activities. Third, the letter states that the applicant is considered to be one of NCLR’s “finest Social Workers” without elaborating on this title. Fourth, this letter refers to the applicant’s involvement with the NCLR New York Chapter since June 21, 1985. The applicant’s Form I-687 shows that he was living in Pompano Beach, Florida from April 1985 until June 1986. Finally, the regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations from organizations should state the address where the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. This letter fails to follow these delineated guidelines. Given the numerous deficiencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States since June 1985.

- A letter from [REDACTED], Owner/Partner, Tajmahal Restaurant, dated October 9, 1999. This letter states, “[t]his is to inform [sic] that [REDACTED] of [REDACTED], Corona, New York 11368 worked in this restaurant as a ‘kitchen helper’ between September 1986 and December 1988. He received \$225 per week as salary. . . .” The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that letters from employers must include: the applicant’s address at the time of employment; duties with the company; whether or not the information was taken from official company records; where such records are located; and whether CIS may have access to the records. This letter fails to conform to the regulatory guidelines for employer letters. Moreover, the New York Department of State Division of Corporations does not have an active or inactive listing for a Tajmahal Restaurant in September 1986. Give these deficiencies, this letter is of little probative value as evidence of the applicant’s continuous residence in the United States since September 1986.
- An affidavit from [REDACTED], President, J & B Travel Agency, Inc., dated June 14, 1991. This letter provides, “I, [REDACTED] hereby certify that I [sic] Mr. [REDACTED] has used our courier services to and from Ecuador since approximately 1986. He comes in on a regular basis. If you need any further information, please feel free to contact me.” This letter does not indicate whether Mr. [REDACTED] has personal knowledge of the applicant’s use of his courier service or whether he obtained this information from company records. This letter would have carried more weight had [REDACTED] provided the applicant’s address in 1986 or any

other relevant information regarding the applicant's residence. Since this letter lacks considerable detail, it is of little probative value as evidence of the applicant's continuous residence in the United States since 1986.

- An affidavit from [REDACTED], dated May 31, 2004, notarized June 4, 2004. This affidavit, in part, states:

I met [the applicant] at my nephew's Weeding [sic] Ceremony on 01/25/1985 at a church in Corona, New York. He was a family friend of the groom who was accompanied with the family members of the groom at the occasion. However, we became good friends ever since and continued our friendship up until now . . . I visited him at [REDACTED], New York City, New York 10032 several time [sic] in between January 1985 and April 1985. I was informed that my friend [REDACTED] was working at BBQ, 27 West 72nd Street, NYC, New York 10023 where I was treated [sic] couple of times with great foods that could not be yet [sic] forgotten.

This affidavit provides detailed information on how [REDACTED] became acquainted with the applicant and their subsequent relationship. Therefore, this letter has value as probative evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated August 15, 2002, in part, provides:

. . . [REDACTED] is a very good friend of mine, and I know him since August 1984. I used to work with him in an Agricultural Farm as a SOD worker, and our friendship started from the work place . . . [W]e used to live together in the same apartment, and my friend [REDACTED] used to explain his personal life and experiences in USA all the time. . . . His first job was in an Agricultural Farm named [REDACTED] as in Miami, Florida. Then he worked in a CITGO Gas Station in Pompano Beach, Florida. He also worked in Food Restaurant [sic] in New York City.

This affidavit is deficient and inconsistent with the applicant's Form I-687. The affidavit states that [REDACTED] met the applicant in August 1984 when the applicant was employed as a SOD worker. The applicant's Form I-687 shows that he began his employment as a SOD worker in April 1985. Additionally, the affidavit states that the applicant's first employment was with [REDACTED] and he was then employed at a CITGO Gas Station in Pompano Beach, Florida. The applicant's Form I-687 shows that he was employed with [REDACTED] during his entire residence in Florida. There is no mention on applicant's Form I-687 of his employment at a CITGO Gas Station. Finally, this affidavit neglects to provide relevant details such as the address that [REDACTED] resided at with the applicant when they were living together. Given these discrepancies, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States since August 1984.

- A letter from the [REDACTED] Pastor, dated May 13, 2002. This letter states, “[REDACTED] residing at [REDACTED] Corona, New York 11368, is a parishioner in good standing and is registered in this parish since 1981. He attends Sunday mass on a regular basis and is known to be of good moral character. His envelope number is [REDACTED]” The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations from churches should state the address where the applicant resided during the membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. This letter fails to follow these delineated guidelines. Therefore, this letter is little probative value as evidence of the applicant’s continuous residence in the United States since 1981.
- A letter from Chemical Bank, dated November 21, 1981, which states, “[a]ccording to our new policy, we need your social security number to continue your account with us. All of our out of state clients are required to provide their social security number within 30 day of this letter.” This letter is addressed to the applicant at [REDACTED] Pompano Beach, Florida 33060. However, the applicant’s Form I-687 states that on November 21, 1981, he was residing in New York. The applicant claims that he moved to Pompano Beach, Florida in April 1985. Therefore, this document is without any value as probative and credible evidence of the applicant’s residence in the United States prior to January 1, 1982.
- A notarized letter from [REDACTED], Java Del Valle Corp., dated May 14, 2002, which states:

This is to certify that [REDACTED] lived at [REDACTED] New York, NY 10032 from August of 1982 to the year 1990. He took living off in the said apartment between April of 1985 & July 1986 as he went to Florida for employment purpose, and resumed his residency in August 1986, which continued until December 1990.

Notably, this letter does not specify [REDACTED]’s position title with Java Del Valle Corporation. Furthermore, the letter states, “[i]f you have any questions please feel free to call me at the above telephone number.” However, the letter does it contain a phone number at which to contact [REDACTED] to verify the content of his statement. Moreover, the letter is inconsistent with the applicant’s Form I-687, which shows that the applicant resided at [REDACTED] [REDACTED] from August 1981 until April 1985 and September 1986 until December 1987. Given these discrepancies, this letter is without any probative value and credibility as evidence of the applicant’s continuous residence in the United States during the requisite period.

- A copy of a receipt from E.C. Electronics, Inc., New York, N.Y. The copy of the receipt is of poor quality. Therefore, the applicant’s name and address are not visible. The receipt appears to have been issued in 1982, but this date is also barely visible. Therefore, this

document does not have any probative value as evidence of the applicant's residence in the United States in 1982.

- A copy of a receipt from J & B Express, dated April 18, 1982. This receipt is written in Spanish and does not contain the address of the company that issued it. There is no indication that the receipt was issued in the United States. Additionally, the receipt does not contain the applicant's name or address. Therefore, this document does not have any probative value as evidence of the applicant's residence in the United States on April 18, 1982.
- A copy of an identity card from the Mount Sinai Hospital, New York. This card contains the applicant's name and date of birth. It states that the expiration date of the card is February 3, 1982. However, the card does not show the date that it was issued. Therefore, this card does not have any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- An affidavit and employer declaration from [REDACTED], Labor Contractor. The documents provide that the applicant was employed with [REDACTED] at his farm in the position of Sod Worker from April 1, 1985 until July 31, 1986. The dates of employment listed on these documents are somewhat inconsistent with the applicant's Form I-687. The applicant's Form I-687 shows that he was employed with [REDACTED] in Miami, Florida from April 1985 until June 1986 and he resided in Florida from April 1985 until June 1986. Furthermore, these documents do not include the applicant's address during his employment at the [REDACTED] farm. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that letters from employers must include the applicant's address at the time of employment. Given these deficiencies, the employer declaration and affidavit from Mr. [REDACTED] are without any probative value as evidence of the applicant's continuous residence in the United States from April 1, 1985 until July 31, 1986.

The record shows that on August 19, 2002, the applicant submitted a Form I-485, Application to Adjust Status, pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000. The applicant submitted in support of this applicant several of the aforementioned documents. The applicant also submitted several other documents that relate to the requisite period. These documents are as follows:

- A letter from the New York City Health & Hospitals Corporation, dated March 15, 1984. This letter is issued from the collections department of Woodhull Hospital indicating that the applicant owes \$91.00 to the hospital.¹ Since this document does not provide the date that

¹ The phone number for Woodhull Hospital listed on this letter is 718-963-8236. However, the area code 718 was not in use in Queens until 1985. A Bell Atlantic Press Release on the issuance of the 347 area code provides, in part, "[t]he 212 area code was introduced in 1945 and served all of New York City for 40 years. The 718 area code

the applicant received medical treatment at the hospital, it constitutes only limited evidence of the applicant's residence in the United States in 1984.

A letter from [REDACTED], Records Representative, Verizon, dated September 20, 1999. The letter states, "[t]his is to verify that [REDACTED] established a telephone service with The New York Telephone at the address at [REDACTED], New York, New York 10032 on November 20, 1984." This letter does not provide the source of [REDACTED]'s attestation regarding the start date of the applicant's telephone service. It is unclear whether [REDACTED] obtained this information from company archives or the applicant's own testimony. Furthermore, the letter does not have a phone number to contact [REDACTED] to verify the content of his statement. Given these deficiencies, this letter is of little probative value as evidence of the applicant's residence in the United States in November 1984.

- A letter from [REDACTED], Refund Desk, United Airlines. This letter is regarding the applicant's request for a refund of an airline ticket. The letter, dated April 26, 1987, is addressed to the applicant at [REDACTED] Pompano Beach, Florida. However, the applicant's Form I-687 shows that he resided at this address from April 1986 until June 1986. The application shows that between September 1986 and December 1987, the applicant resided at [REDACTED], New York, New York. Given this inconsistency, this letter does not have any probative value and credibility as evidence of the applicant's residence in the United States in April 1987.

On January 24, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director found that the applicant did not furnish evidence of his entry or corroborative evidence that he entered. The director also found that the affidavits the applicant submitted are neither credible nor amenable to verification. The director determined that the applicant failed to provide evidence that he is eligible for temporary resident status. The director concluded that the applicant failed to meet his burden of proof in the proceeding. The director afforded the applicant 30 days to submit additional evidence.

On July 17, 2006, the director issued a notice to deny the application. In denying the application, the director determined that the applicant failed to submit additional evidence within the allotted period of time. The director denied the application for the reasons stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant submitted credible evidence in support of his application.² Counsel describes the applicant's corroborating evidence. Counsel

was introduced in 1985, replacing the 212 area code in Brooklyn, Queens and Staten Island." (<http://www.prnewswire.com>)

² Counsel erroneously refers to the LIFE Act in his brief. This proceeding is under section 245A of the Immigration and Nationality Act.

states that the applicant has resided in the United States during the requisite period and is admissible to the United States. Counsel resubmits the applicant's previously submitted evidence and submits the following additional evidence:

- An affidavit from the applicant listing his employment and residential addresses in the United States. Additionally, the affidavit describes the applicant's corroborating documentation.
 - A copy of the applicant's Form I-687 application, signed November 6, 1987.
 - A statement from the applicant's spouse, [REDACTED], notarized September 18, 2002 in Ecuador. This statement provides, in part, "I, [REDACTED], wife of the Late Amnesty Applicant, [REDACTED] do solemnly state that my husband went to [sic] USA in July 1981. Since then he was never able to obtain any legal status in the United States. He came one time to visit the family in May 1987 and returned to [sic] USA in June 1987." This statement is inconsistent with the applicant's Form I-687 application. The applicant showed on his application that he has been absent from the United States on two occasions. The applicant stated that he traveled to Ecuador from May 1984 until June 1984 and May 1987 until June 1987. In addition, the applicant's spouse resides in Ecuador and does not have direct personal knowledge of the applicant's continuous residence in the United States. Given these deficiencies, this statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
 - A fill-in-the-blank affidavit from [REDACTED], dated February 20, 2006. This affidavit states that [REDACTED] resided with the applicant at [REDACTED] in New York from August 1981 until December 1987. This affidavit fails to provide any details regarding [REDACTED]'s relationship with the applicant. The affidavit does not state how Mr. [REDACTED] became acquainted with the applicant. In addition, the affidavit does not detail their relationship during the requisite period, such as their housing agreement/arrangement. Moreover, the applicant's Form I-687 shows that he was living in Pompano Beach, Florida from April 1985 until June 1986. The affidavit neglects to mention this break in the applicant's residence with [REDACTED]. Given the numerous deficiencies, this affidavit is without any probative value as evidence of applicant's continuous residence in the United States during the requisite period.
 - A fill-in-the-blank affidavit from [REDACTED], dated February 17, 2006, and notarized on February 2, 2006. This affidavit provides that [REDACTED] met the applicant at a Christmas party at his brother's house in December 1981. Notably, the affidavit does not indicate that [REDACTED] first met the applicant in the United States. In addition, this affidavit lacks considerable detail on [REDACTED]'s relationship with the applicant. Although the affidavit lists the applicant's addresses in the United States during the requisite period, there is no
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indication that [REDACTED] has direct personal knowledge of this information. Given this lack of detail, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has submitted one document, an affidavit from [REDACTED], which is of any value as probative evidence. The remaining documentation on record either lacks considerable detail or contains material inconsistencies. 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.