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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: New York

Date:

MAR 03 2006

MSC-05-060-10106

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:

Self-represented

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.

Handwritten signature of Robert P. Wiemann in black ink.

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. 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 asserts that he meets all of the criteria and conditions of eligibility under the provisions of the law.

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on November 29, 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 listed his first address in the United States as Bronx, New York, from November 1981 to February 1989. At part #33, he listed his first employment in the United States as a car washer for Tremont Car Wash in Bronx, New York from December 1981 to February 1990.

The applicant submitted the following documentation:

- A notarized form-letter “Affidavit of Witness” for [REDACTED] dated December 7, 2005. The affidavit states that [REDACTED] lives in Takoma Park, Maryland and that he has personal knowledge that the applicant resided at [REDACTED] from November 1986 to December 2005. The statement is not accompanied by

identification; it lacks any details that would lend credibility to a 19-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified. The declarant does not indicate under what circumstances he met the applicant in 1986, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized form-letter "Affidavit of Witness" for [REDACTED] dated December 8, 2005. The affidavit states that [REDACTED] lives in Hyattsville, Maryland and that he has personal knowledge that the applicant resided in Bronx, New York from August 1993 to the present. The affiant also states that he came to know the applicant because the applicant is his uncle's neighbor and friend. The affiant has made frequent visits to see his uncle since moving to the United States in 1993. The statement is not accompanied by identification; it lacks any details that would lend credibility to a 12-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified. The declarant does not indicate under what circumstances he met the applicant in 1993, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter affidavit for [REDACTED] dated April 25, 2006. The affidavit states that [REDACTED] lives in Bronx, New York and that he has personal knowledge that the applicant resided in [REDACTED], Bronx, New York from November 1986 to December 2005. The statement lacks any details that would lend credibility to a 19-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified. The declarant does not indicate under what circumstances he met the applicant in 1986, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

None of the evidence provided establishes that the applicant was physically present or had continuous residence in the United States from 1981 to 1988 or that he entered the United States in 1981.

The director issued a first notice of intent to deny on November 16, 2005 and a second on March 13, 2006 and denied the application for temporary residence on August 1, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical

presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

In her decision, the director states that a records check of the New York State Division of Corporations lists October 3, 1991 as the initial department of state filing for Tremont Car Wash.¹ This record does not contain evidence that the company was in existence from 1981 to 1989, the time period that the applicant claims to have worked for the company in part #33 of the Form I-687.

On appeal, the applicant does not provide additional information or evidence in support of his claim that he was physically present or had continuous residence in the United States from 1981 to 1988 or that he entered the United States in 1981. The applicant does not address the director's statements regarding Tremont Car Wash. The applicant did not provide anything in support of his appeal and on the Form I-694 waived his right to submit a written brief or statement.

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 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.

¹ See <http://appsext5.dos.state.ny.us>.