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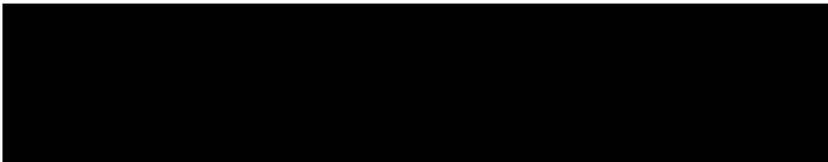
Office: NEW YORK

Date: **MAR 25 2008**

IN RE: Applicant: 

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, 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, counsel asserts that the director's decision was arbitrary and an abuse of discretion.

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. See CSS Settlement Agreement paragraph 11 at page 6 and 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 or her 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 21, 2005.

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

- A letter from [REDACTED] in which he stated that the applicant has been attending Friday Jumah Prayer Service and other prayers at the Masjid Malcolm Shabazz mosque since 1981. Here, the declarant's statements are inconsistent with the applicant's statement on his Form I-687, at part #33 where he failed to list any associations or affiliations with any religious establishment. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the letter. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa

petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Lastly, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not state the address where the applicant resided during the requisite period. 8 C.F.R. § 245a.2(d)(3)(v). Because this letter does not conform to regulatory standards, and because it contains statements that conflict with what the applicant showed on his Form I-687 application, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] in which he stated that he has known the applicant since 1980 when they both lived in New York. Here, the affiant fails to indicate how he met the applicant. He has failed to specify the frequency with which he saw the applicant during the requisite period. Although not required, the affiant has not provided evidence that he himself was present in the United States during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he was the general manager of the Parkview Hotel located in New York and that he has known the applicant since February of 1988. Here, the affiant has not provided evidence that he himself was present in the United States during the requisite period. The statement lacks specific details of the affiant's relationship with the applicant. Moreover, it refers only to a time period during 1988, with no mention of the applicant's entry into or residence in the United States before January 1, 1982.
- A form affidavit from [REDACTED] in which he stated that he has known the applicant since 1981. The affiant lists two addresses in New York where the applicant allegedly resided from 1980 to 1988. However, there is nothing in the record to demonstrate that this information is based upon the affiant's firsthand knowledge, rather than knowledge that is based primarily on what the applicant told him about his addresses in the United States. It is not clear from the record how frequently the affiant had contact with the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted by the applicant were not credible and were insufficient to support his claim of residency during the requisite period. The director also noted that the telephone number given by affiant [REDACTED] on his business card was not the number to the hotel where he alleged that he was employed.

On appeal, counsel asserts that the director's decision was arbitrary and was an abuse of discretion, and that the testimony and evidence submitted was sufficient to establish the applicant's eligibility for temporary resident status.

In the instant case, the applicant has not provided any contemporaneous evidence of continuous unlawful residence in the United States throughout the requisite period. Although the applicant submitted attestations from four people, they are lacking in detail and can be afforded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period. Statements made by [REDACTED] of the Masjid Malcolm Shabazz mosque are inconsistent with the applicant's statement on his Form I-687 application. Also, the letter from [REDACTED] referred to above lacks sufficient detail. The statements made by [REDACTED] referring to the applicant's addresses, do not appear to be based upon personal firsthand knowledge. It is also noted that the affiant [REDACTED] does not admit to knowing the applicant before 1988, and his statement is not amenable to verification.

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 inconsistent information on his Form I-687 application 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 for the requisite period 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.

It is further noted that according to evidence in the record, an FBI report based upon the applicant's fingerprints, the New York Police Department arrested the applicant on December 16, 2004, and charged him with Trademark counterfeiting in the second degree, in violation of New York Penal Law § 165.72, and with Failure to disclose the origin of a recording in the first degree, in violation of New York Penal Law § 275.40. The record of proceeding also contains a final court disposition that shows that the above noted charges were dismissed by the Criminal Court of the City of New York County of New York on November 18, 2005 via Motion to Dismiss made by the District Attorney.

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