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**U.S. Citizenship  
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Services**

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[REDACTED]

41

FILE: [REDACTED] Office: Los Angeles

Date: **MAR 27 2008**

MSC 05 230 12120

IN RE: Applicant: [REDACTED]

PETITION: 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits [or Records] 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, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. The district director further determined that the applicant admitted that he had been absent from this country from June 4, 1987 to July 28, 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.2(h)(1). Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of residence in this country for the requisite period and states that he submitted sufficient evidence to support such claim. The applicant submits documentation in support of his appeal.

An applicant for temporary residence 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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).

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.* 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 (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 first issue to be examined 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 18, 2005. 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 listed "[REDACTED]" in Sylmar, California from

March 1981 through at least the end of the legalization application period on May 4, 1988. Furthermore, at part #32 of the Form I-687 application where applicants were asked to list all absences from this country dating back to January 1, 1982, the applicant listed "NONE." In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since January 1, 1982, the applicant listed "self employed" in general construction from March 1981 to May 1988.

Although the record indicates that the applicant failed to include any evidence in support of his claim of continuous residence in the United States since prior to January 1, 1982 with the Form I-687 application submitted on May 18, 2005, the applicant did previously submit supporting documentation.

The record contains photocopies of rent receipts for a room at [REDACTED] in Sylmar, California, for the month of March in each year of the requisite period beginning in 1981. The rent receipts are signed by [REDACTED]

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] indicated that he had been acquainted with the applicant as a friend of the family. [REDACTED] noted that the applicant resided with him as a guest at his home at [REDACTED] in Sylmar, California, since March of 1981.

The applicant included an affidavit that is co-signed by [REDACTED] and [REDACTED]. Both affiants asserted that they had known the applicant since 1981. Nevertheless, the probative value of the affiants' testimony in this particular affidavit is minimal because neither affiant directly attested to the applicant's residence in the United States for the requisite period.

The applicant submitted three affidavits that are signed by [REDACTED], and [REDACTED] respectively. All three affiants stated that they had personal knowledge that the applicant had been living in Los Angeles, California since 1981. However, the affiants provided no other specifics about their relationship with, or knowledge of, the applicant. As such, the testimony of [REDACTED] and [REDACTED] must be considered as too vague to provide credible, probative evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant included an affidavit signed by [REDACTED] who declared that he had personal knowledge that the applicant resided in Los Angeles, California since 1981. [REDACTED] claimed that his knowledge regarding the applicant's residence was based upon his acquaintance with contractors with whom the applicant worked as helper. However, [REDACTED] failed to specify the names of any of the contractors who purportedly worked with the applicant. Although [REDACTED] provided the name of the general locale where the applicant purportedly lived, he failed to provide any specific and verifiable testimony to substantiate the applicant's claim of residence in the United States since prior to January 1, 1982.

The applicant provided a statement containing the letterhead of East-West Consultants in North Hollywood, California that is signed by [REDACTED]. [REDACTED] stated that he has known the applicant since 1981, and that the applicant has performed many jobs for him when needed. While [REDACTED]'s statements indicated that he employed the applicant on a less than formal basis, he failed to provide either the applicant's address of residence during such employment or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, it must be noted that the applicant failed to list [REDACTED] as an employer at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since January 1, 1982.

The applicant submitted an undated letter signed by [REDACTED] who declared that the applicant has been his friend for the past twenty-two years and has done "a lot of work" at his home in Palmdale, California. Although [REDACTED] testified that he had known the applicant for twenty-two years, he failed to provide any relevant information that would substantiate the applicant's claim of residence in the United States since prior to January 1, 1982.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application at CIS' District Office in Los Angeles, California on February 15, 2006. The notes of the interviewing officer and notations made on the Form I-687 application reveal that the applicant testified under oath that he had been absent from the United States for fifty-four days when he traveled to Mexico to visit family from June 4, 1987 to July 28, 1987. The notes of the interviewing officer reflect that the applicant failed to provide any indication that any unforeseen circumstances had delayed his return to the United States on the occasion of this absence. Furthermore, the fact that the applicant failed to disclose this absence but instead listed "NONE" at part #32 of the Form I-687 application where applicants were asked to list all absences from this country dating back to January 1, 1982 seriously undermines the credibility of the applicant as well the credibility of his claim of residence in this country for the requisite period.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687 application in the original legalization application period between May 5, 1987 to May 4, 1988. The district director further determined that the applicant admitted that he had been absent from this country from June 4, 1987 to July 28, 1987, and, therefore, exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.2(h)(1). Consequently, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application on March 16, 2006.

On appeal, the applicant reiterates his claim of residence in this country for the requisite period and states that he submitted sufficient evidence to support such claim. While the applicant provides new documentation relating to the presence of [REDACTED] in this country during the requisite period he failed to provide any new evidence regarding his residence in this country

since prior to January 1, 1982. The supporting documents contained in the record lack specific detail and verifiable information to substantiate the applicant's claim of residence in the United States for the requisite period. More importantly, the applicant damaged his own credibility, the credibility of her claim of residence in this country, and the credibility of documents submitted in support of such claim when he failed to list his fifty-four day absence from this country in 1987 at part #32 of the Form I-687 application

The absence of sufficiently detailed supporting documentation and the conflicting testimony provided by the applicant himself seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his own conflicting testimony, 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 May 4, 1988 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The next issue to be examined in this proceeding relates to the applicant's admitted absence of fifty-four days from this country from June 4, 1987 to July 28, 1987. While not dealt with in the district director's decision, there must, nevertheless, be a further determination as to whether the applicant's absence from the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that emergent means "coming unexpectedly into being."

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

An applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status was filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant testified under oath at his interview on February 15, 2006 that he had been absent from the United States for fifty-four days when he traveled to Mexico to visit family from June 4,

1987 to July 28, 1987. Clearly the applicant's absence exceeded the forty-five day limit for a single absence put forth in 8 C.F.R. § 245a.15(c)(1). The applicant has failed to assert that he experienced any exigent circumstances that delayed his return to the United States on July 28, 1987. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.2(h)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States during the requisite period, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given that the applicant's own testimony that he exceeded the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis as well.

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