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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 216 10633

Office: NEW YORK

Date: **MAY 28 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, and is now before the Administrative Appeals Office 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 for the applicant reasserts the applicant's claim and submits a brief stating that Citizenship and Immigration Services' expectations regarding document production are unfair and contrary to the settlement agreements.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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.* 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 he resided in the United States during the requisite time period. Here, the applicant failed to meet this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687 in 1990 and subsequently filed a Form I-485 seeking permanent resident status under the Legal Immigration Family Equity (LIFE) Act. In support of his claimed continuous residence in the United States during the relevant time period, the applicant submitted the following documents:

1. Affidavits dated September 17, 1991 and November 16, 1991 from [REDACTED] and [REDACTED] a, respectively, both of whom claimed that they had known the applicant since 1981 and provided the city and state of the applicant's residence from 1981 through the date of their respective affidavits. Neither affiant provided the applicant's exact residential address or other details pertaining to the circumstances of the applicant's residence in the United States during the statutory period. Furthermore, both affidavits are inconsistent with the applicant's latest Form I-687, where the applicant claimed to have resided in Sunnyside, New York during the time that the affiants stated the applicant resided in Westbury, New York. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record also contains a more recent affidavit from [REDACTED] b, dated January 7, 2002. In this affidavit, the affiant claimed that he had known the applicant since December 1981 and provided the applicant's residential address at the time the affidavit was written. However, as with the other two affidavits, this affidavit also provided no

information that would lend credibility to an alleged 20-year relationship with the applicant. Accordingly, all three of these affidavits are deficient in relevant content and will therefore be afforded minimal evidentiary weight.

2. An employment verification letter dated November 16, 1989 from [REDACTED] stating that the applicant was employed by this enterprise in 1988. Although the letter is signed by [REDACTED] his position title with this organization is unclear. It is also noted that the address [REDACTED] indicated as belonging to the applicant during the date on the employment letter does not match the address the applicant provided in his Form I-687 for the same time period. Additionally, the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i) require that the claimed employer provide the dates of the applicant's employment, his address at the time of employment, his job duties, and information as to the existence and possible location of employment records. In the present matter, this necessary information was not provided. As such, this employment letter will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant statutory period.
3. An affidavit dated February 13, 2006 from [REDACTED] claiming that he has known the applicant since 1977 and that the applicant is a hard worker and a good person. It is noted that this affiant made no indication that he had personal knowledge of the applicant's residence in the United States as of January 1, 1982 and continuing through the end of the statutory period. Merely claiming that he has known the applicant since five years prior to the time the statutory period commenced in no way establishes that the applicant continued to reside in the United States beyond 1977, particularly in light of information provided by the applicant in the Form G-325A, submitted with his latest Form I-687, where he indicated that he resided in Colombia from the time he was born until December 1981. Accordingly, [REDACTED] statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

The applicant also submitted an undated notarized statement from [REDACTED] stating that the applicant was a tenant at [REDACTED] from July 8, 1977 to October 23, 1977 during which time Ms. [REDACTED] was the landlord of the property. It is noted, however, that this information is inconsistent with both of the applicant's Form I-687 applications. In No. 33 of the earlier Form I-687, dated January 17, 1991, the applicant indicated that he resided at [REDACTED] from July 1977 to February 1988. In No. 30 of the more recent Form I-687, however, the applicant claimed that he resided at [REDACTED], Sunnyside, New York from April 1977 to April 1991. Thus, not only are both applications inconsistent with [REDACTED]'s statement, but they are also inconsistent with one another. As previously stated, the applicant is required to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The fact that the applicant provided supporting documentation that is inconsistent with his own claims gives rise to doubt as to the applicant's credibility. Moreover, even if the applicant were able to establish his residence in the United States in 1977, this would in no way lead to the conclusion that the applicant

continued to reside in the United States until and continuing through the statutory period. Accordingly, [REDACTED] statement lacks probative value in establishing the applicant's residence in the United States during the relevant time and will be afforded minimal evidentiary weight.

Upon reviewing the applicant's interview responses as well as the various forms and supporting documentation submitted by the applicant, the district director issued a notice of intent to deny dated January 27, 2006 noting a number of adverse findings. First, the director noted that at his interview the applicant claimed have lived in Westbury, New York from 1977 to 1988, while in the most recently filed Form I-687 he claimed to have lived at Sunnyside, New York from April 1977 to April 1991. The director also discussed the affidavits from [REDACTED] and [REDACTED], respectively, erroneously noting that both affidavits addressed the applicant's residence in the United States during the statutory time period. While [REDACTED]'s statement referenced the applicant's alleged residence in the United States as of December 1981, it is noted that [REDACTED]'s statement only attested to the affiant's acquaintance with the applicant as November 1988, a date that is outside the statutory period. Thus, the director's comment regarding the latter affidavit was erroneous. **Regardless, the director properly determined that both affiants' statements failed to corroborate the applicant's claim.**

In response, counsel submitted a letter dated February 24, 2006 in which he vehemently protested any adverse findings, claiming that the applicant has continued to reside in the United States since 1977 and further stating that the applicant must have misunderstood his interviewer by indicating otherwise. However, counsel's explanation does not address the discrepancy that the applicant himself perpetrated when he indicated on his Form G-325A that he only commenced his alleged continuous residence in the United States in December 1981. It is noted that the applicant signed this document under the penalty of perjury, suggesting that the information provided therein was truthful.

With regard to copies of photographs, which, according to counsel, establish the applicant's continuous presence in the United States since 1977, there are no identifying factors in these photographs to suggest that they were taken in the United States during the relevant time period. Therefore, they have no probative value in establishing the applicant's presence in the United States during the relevant time period.

On appeal from the director's April 24, 2006 decision denying the application, counsel further disputes the director's findings, asserting that the director's decision is contrary to the Act and the settlement agreement provisions. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the applicant has not provided any evidence of residence in the United States during the statutory period except for his own statements and the affidavits discussed above, which lack credibility and probative value for the reasons stated. Moreover, the record clearly establishes that, at the very least, the applicant has provided inconsistent information with regard to the date he commenced his alleged continuous unlawful residence in the United States. Any indication that these inconsistencies were the result of miscommunications or misunderstandings is simply insufficient, particularly in light of the fact that the inconsistencies have been perpetrated by the applicant's attestations to facts under the penalty of perjury.

See Matter of Ho, 19 I&N Dec. at 591-92. The applicant has submitted no additional documentation to reconcile the varying statements made by the applicant as well as a number of the affiants whose statements were previously submitted on the applicant's behalf.

The absence of sufficiently detailed supporting 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 statements 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.