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**U.S. Citizenship
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FILE: [REDACTED]
MSC 06 103 11775

Office: NATIONAL BENEFITS CENTER

Date: **MAY 27 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.


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 Director, National Benefits Center, and 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. Specifically, the director determined that none of the documentation submitted by the applicant addressed his residence in the United States during the statutorily critical time 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 disputes the director's conclusion, asserting that the four affidavits previously submitted were notarized and accompanied by identification documents.

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 evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden. The record shows that of the four affidavits the applicant submitted in support of the Form I-687, none of the affiants claimed to have known the applicant as having resided in the United States during the statutory time period. Rather, two of the affiants claimed that they had known the applicant since 1979, discussing their respective acquaintances with the applicant in Brazil. The two remaining affiants discussed their knowledge of the applicant after the statutory period had expired. As such, none of the affidavits were relevant to the issue of whether the applicant resided in the United States during the statutory time period.

On March 29, 2006, the director issued a notice of intent to deny, notifying the applicant that he had failed to submit sufficient supporting documentation to establish his eligibility. The applicant was allowed additional time in which to provide evidence to overcome the director's adverse findings.

In response, the applicant resubmitted the prior affidavits and further provided his Business Registration Application dated February 6, 2006 and numerous phone bills covering time periods in 2005 and 2006. Thus, the applicant failed to supplement the record with any documentation establishing his residence in the United States during the relevant time period.

Accordingly, on July 17, 2006, the director issued a notice denying the application. The director accurately pointed out that none of the documents submitted by the applicant addressed the relevant issue of the applicant's residence in the United States during the statutory time period. Further, the director noted that none of the affidavits include a contact phone number, identification, or proof that the affiant was in the United States during the statutory period.

On appeal, the applicant disputes the director's adverse finding, claiming that the previously submitted affidavits were notarized and that proper identification documents were submitted. The AAO finds that the adverse finding regarding the submission of identification documents was erroneous. The record shows that each affidavit previously submitted was notarized, thereby indicating that each affiant submitted proper identification documents before the notary whose stamp appears on his/her respective affidavit. However, the fact remains that none of the affiants attested to the relevant issue of the applicant's residence in the United States during the statutory period. Therefore, regardless of proper identification documents, all four affidavits lacked probative value.

The record also shows that the applicant has resubmitted previously submitted phone bills and has further supplemented the record with a statement of his business checking account for June 2006. However, none of these documents are dated during, or pertain to, the statutory period. Therefore, they are not relevant to the issue at hand, i.e., the applicant's continuous, unlawful residence in the United States during the statutory time period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the 1981-88 period. The absence of 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 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.