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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: NEW YORK Date:  
MSC-04-322-10179

OCT 03 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, 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. Specifically, in her Notice of Intent to Deny (NOID), the director stated that the evidence the applicant submitted in support of his application did not satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Because the applicant failed to respond to the NOID, he did not overcome the director's reasons for the denial of his application

On appeal, the applicant submits a statement from counsel and additional evidence for consideration.

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) 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).

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States 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 is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to 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."

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 applicant 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 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 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 August 17, 2004. At part

#32 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his first address in the United States during the requisite period to be 1184 Walton Avenue in the Bronx, New York from June 1987 until the date he submitted his Form I-687. The applicant did not indicate that he had ever been absent from the United States since he first entered. However, at part #26 he indicated that he was issued a visa to enter the United States on December 27, 1999 in Banjul, the Gambia. The applicant did not indicate that he had ever been employed in the United States.

The record also contains a sworn, signed statement by the applicant that is dated June 30, 2005. In it, the applicant testified that he first resided in New York at the [REDACTED] located on [REDACTED] for three days, after which time he moved to [REDACTED] in the Bronx, New York, where he resided from 1981 until 1987. It is noted that the applicant failed to indicate these addresses of residence on his Form I-687.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence that is relevant to his residence in the United States during the requisite period:

- An affidavit from [REDACTED] in which the affiant states that the applicant has resided in the United States since 1981 “as far as he knows.” He states that he met the applicant while he was street peddling in New York. However, he does not indicate the year that he first met the applicant or state that he first met the applicant during the requisite period. The affiant further fails to state when he himself entered the United States. He does not state the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during that period when he did not see the applicant. Because of its significant lack of detail, this affidavit can be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] who states that he has known the applicant since 1980. Though the affiant states that he himself has resided in the United States for 24 years, he does not indicate where he first met the applicant or whether the he first met him in the

United States. Further, the affiant does not state that he personally knows that the applicant resided in the United States for part of all of the requisite period. Therefore, this affidavit carries no weight as evidence that the applicant resided in the United States during that period.

- An affidavit from [REDACTED]” who indicates he is a clerk at the Altro Realty Company’s Uptown Hotel, located on 107<sup>th</sup> Street in New York. This affidavit is dated June 24, 1990 but was notarized 15 years later, on June 27, 2005. The affiant states that the applicant resided at the hotel from December 1981 to March 1984. As was previously noted, the applicant has submitted a sworn statement on which he claimed that his period of residence at this hotel was only for three days. The applicant also failed to list this residence on his Form I-687. The testimony in the affidavit is significantly inconsistent with the applicant’s sworn statement and with testimony he provided on his Form I-687. Therefore, doubt is cast on the credibility of statements made regarding the applicant’s residence in the United States in this affidavit.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 director issued a Notice of Intent to Deny (NOID) to the applicant on July 5, 2005. In the NOID, the director stated that the weight of the evidence submitted by the applicant is limited, as none of the affiants provided proof of their identities, proof that they themselves were present in the United States during the requisite period, or proof that they had direct personal knowledge of the events and circumstances to which they were attesting. The director further noted that the affidavit from Altro Realty Company was notarized 15 years after it was dated. The director also noted that the applicant claimed that he first entered the United States in 1981, but submitted an affidavit from [REDACTED], who claimed that he knew of the applicant’s residency in the United States since 1980. Here, the AAO notes that [REDACTED]’s affidavit does not actually state that the affiant knows that the applicant resided in the United States at any point in time. The affidavit from [REDACTED] only states that he has known the applicant since 1980, without mentioning the applicant’s place of residence at that time. The director concluded by stating that the applicant failed to satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

Because the applicant failed to submit additional evidence for consideration in response to the NOID, he did not overcome the director’s reasons for denial. Therefore, the director denied the application for temporary residence on May 5, 2006.

On appeal, counsel for the applicant states that the applicant was not able to submit additional evidence within the period of time granted by the director. The applicant also submits an additional affidavit for consideration.

The affidavit submitted on appeal is from [REDACTED], who submits the identity page of his United States Passport and a photocopy of an F-1 Non-Immigrant Visa issued to him on June 9, 1976 and a stamp in that passport that indicates that he entered the United States through Boston on June 24, 1976. The affiant states that he has known the applicant since 1981 and he speaks of the applicant's character. However, the affiant does not state where he first met the applicant or whether he first met him in the United States. He fails to state whether he personally knows that the applicant resided in the United States during the requisite period. Therefore, this affidavit does not carry any weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period that carries any evidentiary weight except for his own inconsistent assertions and the statement from the Altro Realty Company. The affidavit from that realty company is notarized 15 years after it is dated. This affidavit states that the applicant resided at the Uptown Hotel for three years, while the applicant clearly stated in his sworn statement that he only resided at the hotel for three days, after which time he moved residences. It is also noted that the applicant did not indicate that he ever resided at that hotel on his Form I-687.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the inconsistencies and contradictions 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 he 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.