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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-220-10737

Office: NEWARK

Date: OCT 09 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 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 Director, Newark. 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 (together comprising the I-687 Application). The director issued a Notice of Intent to Deny (NOID) on August 21, 2006. In the NOID, the director noted that there were inconsistencies in the information provided by the applicant in his Form I-687 applicant and a Form I-687 application that the applicant submitted in 1989. The director also stated that the applicant submitted “no proof” of his continuous unlawful residence in the United States throughout the requisite period. Counsel for the applicant submitted a brief in response to the NOID. The director denied the application on January 30, 2007. The director found that counsel’s brief did not address the deficiencies noted in the NOID. Therefore, the director denied the application for the reasons stated in the NOID.

On appeal, counsel states that the applicant submitted sufficient evidence to establish his continuous residence throughout the requisite period. Counsel further states that the director’s decision was arbitrary and capricious. The applicant has not submitted additional evidence in support of his appeal.

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. See 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).

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 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 for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 8, 2005. At part #30 of the application, where applicants were asked to list their residences in the United States since their first entry, the applicant listed his residences as follows:

- [REDACTED], Paterson, New Jersey from August 1981 until September 1984;
- [REDACTED], Paterson, New Jersey from October 1984 until February 1986; and
- [REDACTED], Paterson, NJ from March 1986 until November 1988.

This conflicts with information previously provided by the applicant. Specifically, the applicant submitted a Form I-687 application in August of 1989 in which he listed his residences as follows:

- [REDACTED], Paterson, New Jersey from April 1980 until April 1982;
- [REDACTED], Paterson, New Jersey from April 1982 until April 1987; and
- [REDACTED], Paterson, New Jersey from April 1987 until June 1989.

These are material inconsistencies which detract from the credibility of the applicant's claim. These inconsistencies were noted by the director, but the applicant has not provided any explanation or documentation to resolve these inconsistencies.

The record also contains the following affidavits and written statements:

- An affidavit from _____ dated November 15, 2002. The affiant states that the applicant was living with him from 1982 until 1987, and then again in 1989. There is also an affidavit from _____ dated July 31, 1989. In this affidavit, the affiant states that the applicant began living with him in 1981. In addition, the record contains a letter from _____ dated February 1992 in which the affiant again states that the applicant began living with him in 1981. In none of these documents does the affiant provide the address or addresses where he and the applicant resided, nor does he provide the specific dates that they resided together. Further, the affiant fails to explain how he came to meet the applicant or how he dates his initial acquaintance with the applicant. Finally, the affiant fails to provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, these affidavits and letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from _____ dated November 12, 2002. The affiant states that he met the applicant in 1984 at a family reunion. The affiant does not claim to have any personal knowledge of the applicant's residence during the requisite period. The affiant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from _____ dated November 12, 2002. The affiant states that he met the applicant in 1983 at a basketball game. The affiant does not claim to have and personal knowledge of the applicant's residence during the requisite period. The affiant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from _____ dated November 14, 2001. The affiant states that he has known the applicant since 1983. The affiant further states that, at the time that he knew the applicant, the applicant was living at _____ in Paterson, New Jersey. The applicant did not list this address on his Form I-687 application. As noted above, the applicant indicated on a previously submitted Form I-687 application that he resided at _____ in Paterson, New Jersey from April 1980 until April 1982, which is before the affiant claims to have met the applicant. Given these material

inconsistencies, this affidavit will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED], dated November 10, 2002, which states he and the applicant are fellow parishioners and that he has known the applicant since 1982. The declarant does not explain how he dates his initial acquaintance with the applicant or provide details regarding the nature and frequency of his contact with the applicant during the requisite period. Given the lack of probative details, this letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] dated February 21, 1992. The declarant states that he has known the applicant since 1984, but does not explain how he met the applicant or how he dates his initial acquaintance with the applicant. Further, the declarant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Two letters from [REDACTED], one dated February 23, 1992 and one dated November 6, 2002. The declarant states that she met the applicant in 1987, when he was working at Brisas Del Valle bakery. The declarant further states that she worked with the applicant at El Mundo del Niño. The declarant does not explain how she came to meet the applicant or how she dates her initial acquaintance with the applicant. Further, the declarant fails to provide details regarding the nature and frequency of her contact with the applicant during the requisite period. Given the lack of probative details, these letters will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], Parochial Vicar of the Cathedral of St. John the Baptist, dated February 13, 1992. The letter states that the applicant had been a member of the parish since 1981. The letter goes on to state: "This was also stated to me by [the applicant's] friend, [REDACTED]." Thus it is not clear whether the author of the letter has personal knowledge of the applicant's membership in the parish. Further, the letter lists the applicant's address as [REDACTED] in Paterson, New Jersey. However, according to the applicant's Form I-687 application, the applicant was residing at [REDACTED], Paterson, New Jersey at the time the letter was written. Given these deficiencies, this letter will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] on letterhead of Brisas Del Valle Bakery. The affiant states that he has known the applicant since 1981 and that the applicant has worked for him since 1983. The affiant does not explain how he came to meet the applicant in 1981. Further, the applicant indicated on his Form I-687 application that his employment with Brisas Del Valle did not begin until August of 1984. Given these

deficiencies, this letter will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains four handwritten letters. These letters are written in Spanish and no English translations have been provided. One letter is dated July 24, 1982 and one is dated September 20, 1982. A third letter also appears to be dated 1982, although the month and day are not apparent. A fourth letter is dated 1991, and is thus outside the requisite period. There is nothing clearly indicating where these letters were sent or to whom they were sent. Therefore, these letters will not be given weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains a number of documents submitted by the applicant which fall outside the requisite period. These include copies of employment letters, Form W-2 Wage and Tax Statements, tax returns, bank records and utility bills. As these documents are outside the requisite period they have no probative value with respect to the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 contradictory information in the record and the applicant's reliance upon documents with little or no 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.

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