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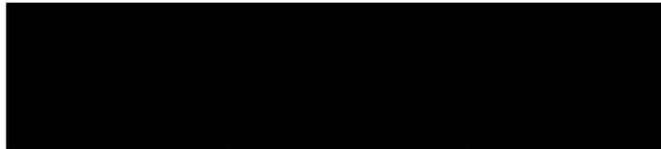
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-089-13464

Office: NEW YORK

Date: OCT 17 2008

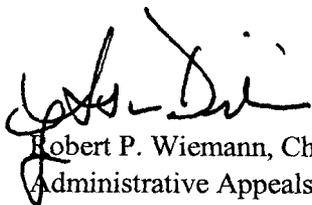
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: SELF-REPRESENTED¹

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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

¹ Though the applicant's Form I-694 Notice of Appeal of Decision is signed by [REDACTED] who indicates that she is the applicant's representative, the record does not contain a properly executed Form G-28 that indicates that Ms. [REDACTED] is the applicant's representative of record. Therefore, the applicant is considered self-represented for these proceedings.

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 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 determined the applicant was not eligible to adjust to Temporary Resident Status pursuant to the CSS/Newman Settlement Agreements. Therefore, she denied the application.

On appeal, the applicant states that he submitted additional evidence in support of his application in December of 2005 but that the United States Postal Service lost this evidence. He submits evidence that mail was lost by the postal service and also submits other additional evidence in support of his application.

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).

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 December 28, 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 indicated his addresses in the United States during the requisite period were: [REDACTED] in Jackson Heights, New York from April 1981 to August 1986; and [REDACTED], also in Jackson Heights beginning in August 1986. At part #31 where the applicant was asked to indicate all churches and organizations of which he had been associated or affiliated, he stated that he had no such affiliations or associations. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was a self-employed handyman for the duration of the requisite period.

The record also contains a Form I-687 submitted by the applicant in 1990 to establish class membership. The applicant indicated his addresses in the United States, his absences from the United States and his employment consistently with his subsequently filed Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that he 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, unions or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to.

The record contains the following evidence that is relevant to the applicant's claim that he resided continuously in the United States for the duration of the requisite period:

- A declaration from the [REDACTED] who submits a photocopy of his New York State Driver's License and states that he met the applicant in 1982. However, the declarant does not state where he first met the applicant or whether he first met him in the United States. The declarant further fails to state whether he knows if the applicant resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that he did so.
- A declaration from [REDACTED], who submits a photocopy of his New York State Driver's License and states that he met the applicant in August 1985. However, the declarant does not state where he first met the applicant or whether he first met him in the United States. The declarant further fails to state whether he knows if the applicant resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that he did so.
- A declaration from [REDACTED] who states that he met the applicant in October of 1982. He states that the applicant was his neighbor at that time and continued to be his neighbor for more than six months. However, the affiant does not state where either he or the applicant resided at that time or whether they resided in the United States. Though the

affiant states that he kept in contact with the applicant after they were no longer neighbors, he does not state the frequency with which he saw the applicant during the requisite period.

- A declaration from [REDACTED], who submits a photocopy of her New York State Identification Card and states that she has known the applicant since 1982. She states that the applicant was her roommate, "back in those years" and that they resided at [REDACTED] [REDACTED] in Brooklyn, New York. Though the declarant does not state exactly when she resided with the applicant, it is noted that the applicant did not indicate that he ever resided on 50th Street in Brooklyn, New York either during or after the requisite period. Therefore, doubt is cast on assertions made by this declarant regarding the applicant's residence in the United States.

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 applicant also submitted evidence of his residence in the United States subsequent to the requisite period. However, as this evidence is not relevant to the applicant's claim that he resided in the United States during the requisite period it is not relevant to this proceeding and is not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on April 7, 2006. In the NOID, the director stated that the declarations submitted by the applicant lacked with regards to one or more of the following: documents identifying the declarant; proof that the declarants were in the United States during the requisite period; proof that there was a relationship between the applicant and the declarant and contact information for the declarant. The director also noted that the applicant did not submit contemporaneous evidence in support of his application. The director granted the applicant 30 days within which to submit additional evidence in support of the application.

The record shows that though the NOID was sent to the applicant's address of record, it was returned to Citizenship and Immigration Services (CIS) as unclaimed.

The director denied the application for temporary residence on February 20, 2007. In denying the application, the director stated that the applicant failed to respond to the NOID and that he, therefore, did not overcome her reasons for denial as stated in the NOID.

On appeal, the applicant asserts that he submitted evidence attesting to his residence in the United States during the requisite period on December 2, 2005. He states that this evidence was misplaced by the United States Postal Service and that he did not make copies of this evidence.

He submits a photocopy of a document showing a lost mail report, contact information for declarant [REDACTED] and other documents in support of his application as follows:

- Correspondence from the United States Postal Service that indicates that a package sent by the applicant to CIS in Chicago was received without contents in December 2005. It is noted that the date the applicant attempted to submit the contents of this package was prior to the date the director issued the NOID or her decision.
- A photocopy of a page of a passport that bears a B-2 visa issued to [REDACTED] by the United States Embassy on December 14, 1982. A stamp on the same page of the passport indicates that [REDACTED] was admitted to the United States on December 22, 1982.
- Photographs of the applicant with [REDACTED] and with [REDACTED] of the El Residencia.
- A declaration from Pastor [REDACTED] who states that the applicant has been a member of St. Athanasius Parish since 1982 and that he attends mass weekly. Though the Pastor indicates that the applicant has been a member of his church since 1982, he does not state the source he used to determine the applicant's start date as a member of the church. This is significant because the applicant did not indicate that he had any associations or affiliations with any churches on his Form I-687. Because of this inconsistency and because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states attestations from churches must adhere to, it can be accorded only very minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from Sister [REDACTED] who indicates she is the director of the [REDACTED] of St. Joseph. The declarant states that the [REDACTED] of St. Joseph have known the applicant since 1981. However, she does not state how she was able to determine the date that the applicant became affiliated with the [REDACTED] of St. Joseph. The declarant further fails to state whether she personally knows whether the applicant resided in the United States during the requisite period.
- A declaration from Reverend [REDACTED], who indicates he is affiliated with the Fourth Avenue United Methodist Church and states that the applicant has been an active member of his congregation since November of 1981. Though the Pastor indicates that the applicant has been a member of his church since 1981, he does not state the source he used to determine the applicant's start date as a member of the church. This is significant because the applicant did not indicate that he had any associations or affiliations with any churches on his Form I-687. Because of this inconsistency and because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R.

§ 245a.2(d)(3)(v) states attestations from churches must adhere to, it can be accorded only very minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, though the applicant has submitted evidence in support of his claim that he first entered the United States prior to January 1, 1982 and then resided continuously for the duration of the requisite period, the evidence he submitted prior to his appeal did not satisfy his burden of proof because it was significantly lacking in detail and was not consistent with his Form I-687. Declarants [REDACTED] and [REDACTED] do not state whether they know if the applicant resided in the United States during the requisite period. Similarly, though declarant [REDACTED] states that he was the applicant's neighbor for approximately six months in 1982, he does not state where he or the applicant resided at that time or indicate whether they resided in the United States. He further fails to indicate the frequency with which he saw the applicant in the United States either at that time or for the remainder of the requisite period. Though declarant [REDACTED] states that the applicant resided with her, she does not provide dates associated with this residence and the address that she claims they resided together is not consistent with an address the applicant stated he ever resided at on his Form I-687.

Though the applicant submitted additional evidence on appeal, this additional evidence, when considered with other evidence and testimony in the record does not satisfy his burden of proof. Though the applicant submitted evidence that previously submitted evidence was lost by the United States Postal Service, he does not state what was in that package or indicate how that evidence would have enabled him to satisfy his burden of proof. The date associated with this loss is prior to the date the director issued her NOID or her decision. Though the applicant has submitted a photocopy of [REDACTED] passport and photographs with him and this declarant, Mr. [REDACTED]'s declaration continues to be significantly lacking in detail. The declarations from Pastors [REDACTED] and [REDACTED] are both significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states attestations from churches must adhere to. Further, the applicant stated that he was not a member of any churches or organizations when he submitted his Form I-687. Lastly, though the applicant submitted a declaration from [REDACTED], who states that the applicant has been known to the [REDACTED] of St. Joseph since 1981, the declarant does not indicate whether she knows if the applicant resided in the United States during the requisite period. Therefore, her declaration does not carry any weight as evidence that the applicant did so.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during 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.