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[Redacted]

FILE: [Redacted]
MSC-05-239-14872

Office: DALLAS

Date: **SEP 04 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 District Director, Dallas. 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. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. 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 asserts his claim of eligibility for temporary resident status and asserts that he has submitted affidavits sufficient to substantiate his claim.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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).

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).

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her 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 Supplement to Citizenship and Immigration Services (CIS) on May 27, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following affidavits:

- An affidavit from [REDACTED] in which she stated that she was the mother of the applicant and that she brought him to the United States in July of 1981 and that she worked through December of 1988. She further stated that she came to the United States because she wanted a better life for herself and her son. She stated that she never sent the applicant to school in the United States due to their illegal status. Here, the affiant fails to indicate the applicant's places of residence during the requisite period. Because the affidavit is lacking in detail, it can be afforded minimal weight in establishing the applicant's unlawful residence in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which he stated that he and the applicant were friends when the applicant came to the United States and that they played a lot and celebrated holidays together. The affiant also stated that the applicant's mother brought him to the United States in July of 1981 because she wanted a better life for herself and her son and that she knew that the United States had more to offer. He listed the applicant's places of residence as [REDACTED] in Dallas, Texas from July of 1981 to February of 1982; [REDACTED] in Dallas, Texas from October of 1984 to November of 1986; and [REDACTED] in Dallas, Texas from December of 1986 to January of 1989. Here, the affiant's information is inconsistent with what the applicant indicated on his I-687 application at part # 30 where he listed his address as [REDACTED] in Dallas, Texas from July of 1981 to February of 1982; and [REDACTED] in Dallas, Texas from March of 1982 to September of 1984. Because the affiant's statement concerning the applicant's residence is in conflict with what the applicant indicated on his Form I-687 application, doubt is cast on the authenticity of the document. It is also noted that there is nothing in the record to show that the affiant's statement, concerning the applicant and his mother's presence in the United States since July of 1981, is based upon his first hand knowledge of the applicant's whereabouts and the circumstances of his residency during the requisite period.

In denying the Form I-687 application, the director noted that the applicant had submitted two affidavits that were not amenable to verification. The director also noted that the affidavits fail to provide the preponderance of evidence necessary to establish the applicant's eligibility for the benefit sought.

On appeal, the applicant states that he came to the United States with his mother who did not send him to school because he was illegal. He also states that the only evidence he has to substantiate his presence in the country is affidavits. The applicant submits the following affidavits:

- An affidavit from [REDACTED] in which he states that he has known the applicant since 1982 and that they met when the applicant came to Galveston to visit with friends of his.
- An affidavit from [REDACTED] in which she states that she has known the applicant since 1981 when they met at a family reunion held by her family in Dallas, Texas.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since January of 1986 when he met the applicant at the home of [REDACTED] and [REDACTED] in Fort Worth, Texas. He also states that he and the applicant have become friends and that they talk with each other every month.
- Affidavits from [REDACTED] and [REDACTED] in which they state that they have known the applicant since 1985, that they met him when he was young when they would visit with their relatives who were neighbors of the applicant.

The affiants fail to specify the applicant's place of residence during the requisite period. They also fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. It is also noted that only [REDACTED] claims to have known the applicant prior to January 1, 1982.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the grounds for the director's denial. The affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish his continuous unlawful residence in the country throughout the requisite period. Although the applicant claims to have resided in the United States since he was nine years old, he has provided neither school records nor immunization records to substantiate such claim.

The absence of sufficiently detailed 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 affidavits with little 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.