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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-179-10009

Office: NEW YORK

Date: **SEP 23 2008**

IN RE: Applicant: [REDACTED]

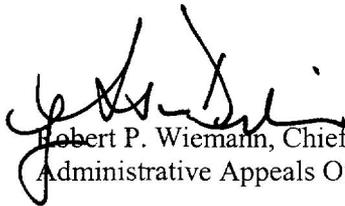
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, 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. 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 submits additional documentary evidence.

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. 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 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 March 28, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided at: [REDACTED] Floor, Bronx, New York from September 1981 until December 1983; [REDACTED] Bronx, New York from December 1983 until June 1985; [REDACTED] York from June 1985 until May 1987; and [REDACTED] May 1987 until February 1989. At part #33, he showed that during the requisite period he was employed with Platon Auto Service as an Auto Mechanic in Flushing, New York from December 1985 until March 1989. The application indicates that the applicant has resided in the United States for the duration of the requisite period. However, the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant submitted the following documentation:

- A copy of a letter from the [REDACTED], Qualified Designated Entity (QDE) Director, Polonia Organizations League Inc., dated March 30, 1988. The letter indicates that this organization was a QDE during the original legalization application period. It states that the

applicant's Form I-687 was rejected because the applicant traveled outside of the United States and returned either without inspection, or without prior Immigration and Naturalization Service permission, or improperly using some type of travel documentation. Although the letter indicates that the applicant illegally entered or lived in the United States prior to January 1, 1982, it does not mention the evidence the QDE viewed to make such an assessment. Therefore, the letter does not provide any information to corroborate the applicant's entry into the United States prior to January 1, 1982. Given this deficiency, this letter is only probative evidence of the applicant's residence in the United States on the date it was issued, March 30, 1988.

- Four identical fill-in-the-blank affidavits from [REDACTED] Each of these affidavits provides, "That [the affiant] has known that [REDACTED] has lived continuously and unlawfully in the United States from before January 01, 1982 until March 30, 1988 when the applicant above-mentioned [sic] visited a QDE to apply for the 1986 'amnesty' program." These affidavits lack considerable detail on the affiants' relationship with the applicant. They fail to explain how the affiants first met the applicant. They also provide no information on the affiants' contact with the applicant during the requisite period. Given these deficiencies, these affidavits are without any probative value.
- A letter from [REDACTED] the American Society of Buddhist Studies, located in New York, New York. This letter, dated November 3, 2005, provides that the applicant has been following the teachings of Buddha since December 1981. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations from organizations should state the addresses where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these regulatory guidelines. The letter fails to show the applicant's inclusive dates of membership with the organization. The letter also fails to state the addresses where the applicant resided during his membership period. Furthermore, it does not establish how the author knows the applicant and the origin of the information he has attested to. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from the applicant, dated March 15, 2005, which provides that he has lived continuously in the United States in an unlawful status during the requisite period. The applicant further states that on March 30, 1988 he went to a QDE and attempted to file an amnesty application with its fee. The applicant indicates that his application was refused because he had traveled outside the United States after November 6, 1986, and returned without permission. However, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. See 8 C.F.R. § 245a.2(d)(6). In this case, the applicant failed to furnish any probative documentation of his residence in the United States during the requisite period.

On January 25, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director noted that the applicant did not submit rent receipts or utility bills for his residence at [REDACTED] in New York. The director determined that the applicant submitted affidavits that are neither credible nor amenable to verification. The director stated that there is no proof of the affiants' direct personal knowledge of the events and circumstances of the applicant's residency. The director determined that the applicant failed to submit credible documents that constitute by a preponderance of the evidence his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding. The director afforded the applicant a period of 30 days to submit additional evidence in rebuttal to the NOID.

- In response to the NOID, the applicant furnished a letter from [REDACTED] Tsung Sun Social Club, dated February 18, 2006. This letter states that the applicant has been a club member since December 1981 until present. It states that the applicant is a "good member" and participates in social activities. The letter also attests to the applicant's continuous residence in the United States in an unlawful status during the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations from organizations should state the addresses where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. The letter states that [REDACTED] is a fellow social club member and the applicant's good friend. However, it fails to specify the date that he first met the applicant. There is no indication that [REDACTED] has direct personal knowledge of the information he has attested to. Furthermore, the letter does not list the addresses where the applicant resided during the membership period. Accordingly, the letter fails to comply with the guidelines delineated in 8 C.F.R. § 245a.2(d)(3)(v). Therefore, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On March 15, 2006, the director issued a notice to deny the application. The director determined that the letter from [REDACTED] does not prove by a preponderance of the evidence that the applicant has resided in the United States for the requisite period. The director further determined that the affidavits the applicant submitted are not credible. The director noted that credible affidavits include documentation identifying the affiant, proof that the affiant was in the United States during the requisite period, evidence that there was a relationship between the applicant and the affiant, and a phone number to contact the affiant for verification. The director found that the affidavits the applicant furnished do not meet such criteria. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant submits additional letters from [REDACTED] The American Society of Buddhist Studies and [REDACTED]

The letter from [REDACTED] is dated April 10, 2006. It provides that the applicant has attended the temple and followed the teachings of Buddha since December 1981 through 1988. The letter further provides that the applicant participates in charity activities, donates to the

charity fund, and is a community volunteer. Finally, the letter attests to the applicant's continuous residence in the United States in an unlawful status during the requisite period. As stated above, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations from organizations should state the addresses where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with the regulatory guidelines. It does not provide the applicant's addresses during the membership period. It also fails to establish how the author knows the applicant and the origin of the information he has attested to. Given these deficiencies, this letter is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The letter from [REDACTED] dated April 12, 2006, states that she has known that the applicant has continuously lived in the United States in an unlawful status during the requisite period. The letter states that on March 30, 1988, the applicant was turned away by a QDE when he attempted to file a completed amnesty application and fee because he had traveled outside the United States after November 6, 1986 and returned without permission. This letter is identical to the fill-in-the-blank affidavit from [REDACTED]. It offers no additional details on [REDACTED] relationship with the applicant during the requisite period. This letter does not establish how Ms. [REDACTED] first became acquainted with the applicant. Nor does it establish their relationship in the United States during the requisite period. Given this deficiency, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The applicant's documentation consists of one letter from a QDE that is probative evidence of his residence in the United States on the date the letter was issued, March 30, 1988. The remainder of the applicant's evidence is either of little probative value or without any probative value for the reasons noted. Therefore, the applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he has resided in the United States during the entire requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.