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U.S. Citizenship
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FILE: [REDACTED]
MSC 05-211-10030

Office: NEW YORK

Date: **MAY 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. 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 District Director, New York, and that 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

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 be 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 periods, 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on April 29, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 initially did not list any residence prior to 2002. However, on March 13, 2006, the applicant was interviewed under oath by a CIS officer. During that interview, the applicant indicated that he resided at [REDACTED] New York, New York, from 1980 until 1984 and at [REDACTED], New York, New York at some point in 1986. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he was self-employed as a vendor in New York City but he did not list the dates of this employment.

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). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted the following evidence:

- An affidavit dated December 6, 2005 from [REDACTED], who stated that he currently resides at [REDACTED] Brooklyn, New York. Mr. [REDACTED] indicated that he has known the applicant since January, 1982. Mr. [REDACTED] indicated that he met the applicant and his mother on [REDACTED] in Harlem, New York where the applicant's mother used to sell food. He did not, however, indicate where the applicant lived, how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.
- An envelope, mailed from the Republic of Mali on September 29, 1986. The envelope was mailed to [REDACTED] and does not bear the applicant's name. It will be given no weight.
- A Verification of Pupil Registration for New York City Public Schools (P.S. 129), dated November 2, 1981. This registration indicates that [REDACTED] was "currently registered at the school." This document does provide some evidence of the applicant's entry to the United States prior to January 1, 1982. It also confirms that the applicant's address in November, 1981 was in fact the same address that he listed on the legalization application, [REDACTED], New York, New York. However, as stated above, the applicant was interviewed under oath by a Citizenship and Immigration Services (CIS) officer on March 13, 2006. During that interview the applicant indicated that he did not attend school in the United States, despite entering the United States at the age of 7. 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. at 591-92. The applicant has not explained this inconsistency or provided any additional information that would confirm his attendance at the school throughout the statutory period, beyond registration in November, 1981. Thus, the probative value of this registration is limited.

On November 15, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the applicant's claim that he entered the United States with his

mother in 1980, but noted that he furnished no evidence of such an entry. The director also noted that during the interview of March 13, 2006, the applicant stated that he did not leave the United States after his initial claimed entry. On Part #32 of the legalization application, applicants were asked to list all departures from the United States since entry. The applicant indicated that his only departure was from 2000 until 2002. Again, this is inconsistent and the applicant has not explained this inconsistency.

This inconsistency also detracts from the legitimacy of the applicant's answer to question #1 on the Form I-687 supplement, SCC/Newman LULAC class membership worksheet. In this question, the applicant indicated that visited an office of INS or a qualified designated entity and that he was turned away from filing the legalization application because he was found to have traveled outside the United States either after November 6, 1986 without advance parole or he had traveled outside the United States and returned after January 1, 1982 with a visa or travel document. Thus, the applicant's claims of being turned away for traveling during the statutory periods are weakened by his conflicting statements that he did not travel outside the United States until 2000.

In the Notice of Denial the director noted this inconsistency. He then went on to adjudicate the case on its merits. Thus, while the class membership of the applicant was questioned in the decision, the director appropriately treated the applicant like a class member and based his decision on the applicant's failure to establish continuous residency for the requisite period, not failure to establish class membership.

The director acknowledged the affidavits submitted by the applicant, but noted that they were not accompanied by proof that the affiants were in the United States during the statutory period. The director advised that credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof of a relationship between the affiant and the applicant. The director advised the applicant that he had failed to submit documents that would establish by a preponderance of the evidence that he continuously resided in the United States for the duration of the requisite period, and afforded him 30 days in which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted two envelopes mailed from Mali in May and July of 1982. These envelopes provide some evidence of the applicant's presence in the United States in May and July of 1982. Their probative value, however, is limited to that time period. They do not demonstrate that the applicant continuously resided in the United States for the entire statutory period.

Accordingly, the director denied the application on September 25, 2006. The director acknowledged the additional evidence submitted, but found that given the paucity of evidence in the record, the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. The director

also noted that CIS had tried to contact the elementary school in New York, P.S. 129, that the applicant claimed to have attended. The school did not respond to CIS inquiries.

On appeal, the applicant did not address the inconsistencies in the record nor did he submit any additional evidence that is relevant to his eligibility for the benefit sought. He simply stated that USCIS erred in the decision.

Upon review, the applicant's assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in persuasive contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence are not addressed. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided very limited contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his travel in and out of the United States during the requisite period and his elementary education.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 minimal probative value, and his own inconsistent statements on his Forms I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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