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**U.S. Citizenship
and Immigration
Services**

LI

[REDACTED]

FILE: [REDACTED]
MSC 05 046 10383

Office: LOS ANGELES

Date: AUG 21 2007

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.

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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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant states that he can't provide contemporaneous documents to corroborate his claim of continuous residence during the requisite period because he worked "under the table" and was always paid in cash.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.* 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 November 15, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] from 1979 through November 2003. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he was worked as a dishwasher for Casa de Ponpey Restaurant in Encino, California, from 1979 to 1980 and that he was self-employed performing construction work from 1980 to October 2003.

During his legalization interview with a CIS officer on November 28, 2005, the applicant stated that he had been a member of Santa Elizabeth Catholic Church in Van Nuys, California, since 1979.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter dated July 15, 2004 from [REDACTED] stated that the applicant had lived in the United States since 1982. [REDACTED] explained that the applicant resided with her family at [REDACTED] during the requisite period.

The applicant also submitted a letter dated August 24, 2004, from [REDACTED] [REDACTED] stated that the applicant, who is a member of his family, had resided in the United States since 1979. [REDACTED] stated that the applicant used to visit him in his home located at [REDACTED] [REDACTED] during the period from 1979 to 1990. However, Mr. [REDACTED] did not identify the nature of his family relationship with the applicant, nor did he provide the applicant's address during the requisite period.

The applicant included an un-notarized affidavit from [REDACTED] pastor of Assumption Church in Los Angeles, California, stating that the applicant had been a member of his parish since June of 1979.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establishes how the author knows the applicant; and, (G) establishes the origin of the information being attested to. The affidavit from [REDACTED] does not meet this standard. The letter is not notarized and is not on letterhead stationery. Additionally, Reverend Fosselman does not list the applicant's addresses during the period of his membership in his parish, nor does he establish the origin of the information provided on the affidavit. Furthermore, [REDACTED] statement contradicts the applicant's statement during his legalization interview that he had been a member of Saint Elizabeth Catholic Church in Van Nuys, California, since 1979.

The applicant also included an un-notarized affidavit dated July 25, 1990, from [REDACTED] [REDACTED] stated that the applicant lived in his home located at [REDACTED] California" from May 1979 to April 1990.

The applicant subsequently provided another letter from [REDACTED] dated June 25, 2004. [REDACTED] stated that the applicant lived with him and his family at [REDACTED] Nuys, California" from 1979 to 1995. This statement contradicts the applicant's statement on the Form I-687 that he resided at that address from 1979 to November 2003.

The applicant provided a letter dated August 3, 2004, from [REDACTED] [REDACTED] stated, "I am witnessed that [REDACTED] lived in the United States from the year 1983 to the present. I was recommended to the address [REDACTED] from a friend because [REDACTED] had mechanical knowledge and I pay him cash money for his services

from the year 1983 to present.” However, [REDACTED] failed to provide any information regarding the frequency of his contact with the applicant.

The applicant also provided a letter dated August 12, 2004, from [REDACTED] stated, “I am witnessed that [REDACTED] lived in the United States from the year 1979 to the present.” [REDACTED] explained that she met the applicant in 1979 when he visited her home with [REDACTED] who is now her husband. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant’s address(es) of residence in this country, to corroborate the applicant’s claim of residence in the United States for that period.

The applicant submitted a letter dated in August 2004 from [REDACTED] Mr. [REDACTED] stated that “I am witnessed that [REDACTED] lived in the United States from the year 1984 to the present. I was recommended from a friend name [REDACTED] to the address [REDACTED] because [REDACTED] have mechanical knowledge. To this date [REDACTED] is still giving services to my car.” However, [REDACTED] failed to provide any information regarding the frequency of his contact with the applicant during the requisite period.

The applicant also submitted an un-notarized affidavit dated May 4, 1990 from [REDACTED] stated that he had personal knowledge that the applicant had resided in Los Angeles, California, since February 1980. [REDACTED] explained that he could attest to this knowledge because he and the applicant were neighbors and he had known the applicant and his family for 10 years. However, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant’s address(es) of residence in this country, to corroborate the applicant’s claim of continuous residence in the United States for the requisite period.

The applicant included a letter dated July 8, 2004 from [REDACTED] stated that he had personal knowledge that the applicant had lived in the United States since 1981. He explained that this knowledge was based on the fact that the applicant worked for him as a gardener’s helper from 1981 to 1987.

Pursuant to 8 C.F.R. § 245a.2(d)((3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien’s address at the time of employment; (B) the exact period of employment; (C) Periods of layoff if any; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The letter from Mr. [REDACTED] does not meet this standard. [REDACTED] did not provide the applicant’s address at the time of his employment as a gardener’s helper.

The applicant also included a letter dated October 26, 2004 from [REDACTED] stated that he had “known of the presence in the United States of [REDACTED] since 1981.” [REDACTED] that the applicant used to come over to his house to visit his parents and would also do mechanical work on his parents’ cars. However, [REDACTED] did not

provide any specific verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant provided a letter dated June 25, 2004, from [REDACTED] stated that the applicant had lived in the United States since 1979. [REDACTED] stated that the applicant had no job at that time, and he used to help the applicant out by paying him cash to work for him as a painter's helper. However, [REDACTED] did not provide any specific verifiable information such as the applicant's addresses in the United States during the period in question.

The applicant also provided an un-notarized affidavit dated May 15, 1990, from [REDACTED] [REDACTED] stated that he had personal knowledge that the applicant had lived in Los Angeles, California, since 1979. [REDACTED] explained that this knowledge was based on the fact that "he did a special job in my vehicle." [REDACTED] did not provide any information as to when the applicant worked on his vehicle or the frequency of his contact with the applicant during the requisite period. Moreover, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of continuous residence in the United States for the requisite period.

The applicant submitted a letter dated June 29, 2004 from [REDACTED] stated that the applicant had lived in the United States since 1984. She further stated, "I was recommended to the address [REDACTED] from the friend because [REDACTED] had mechanical knowledge and I pay him cash money for his service from 1984 to 1987."

On November 28, 2005, the district director informed the applicant of her intent to deny the application because of contradictions between the applicant's testimony on the Form I-687 and during the legalization interview and the affidavits from [REDACTED]. Specifically, the district director noted that the applicant indicated on the Form I-687 that he resided at [REDACTED] from May 1979 to November 2003, but [REDACTED] stated in their affidavits that the applicant resided at that address from 1979 to 1995. The applicant, in response, explained that he resided at [REDACTED] California" from 1979 to 1995, but continued to use that address as his mailing address until 2003 because he "traveled to many cities due to the type of work I did. I never had a permanent residence. So I continued to use the address on [REDACTED] for all my correspondence and when ever an address was needed."

The district director concluded that the applicant's explanation for this discrepancy was not credible since he didn't offer this explanation for the address discrepancy at the time of his legalization interview. The district director, therefore, determined that the applicant had failed to establish continuous residence during the requisite period and denied the application.

On appeal the applicant states that he didn't provide an explanation for this discrepancy during his legalization interview "because I was not asked." The applicant repeats his claim of continuous residence in the United States during the requisite period and states he has no

contemporaneous evidence to corroborate his claim because he was in unlawful status and was always paid in cash. He does not, however, submit any additional evidence to corroborate his claim.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient verifiable information to corroborate his claim of continuous residence in the United States during the 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 applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, 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.