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

L 1

[REDACTED]

FILE: [REDACTED] MSC-05-190-10094

Office: NEW YORK

Date: AUG 29 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.

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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant was ineligible for temporary residence, as he was incapable of meeting either the necessary residency or continuous physical presence requirements. As a result, the director denied the application.

On appeal, the applicant provided an additional affidavit, together with the affiant's identity documentation.

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 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 applicant 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 applicant 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 and 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.* 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 Citizenship and Immigration Services (CIS) on April 8, 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 showed his only address during the requisite period to be at 55 [REDACTED] New York, New York from November 1981 to August 2004. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated he was self-employed as a street vendor on the Grand Concourse in the Bronx, New York from January 1982 to March 2005. With his application, the applicant submitted an affidavit from [REDACTED]. In this affidavit, the affiant stated, "I have known [the applicant] before December 31, 1981 in New York." This affiant failed to explain how he became acquainted with the applicant. In addition, he failed to confirm the applicant resided in the United States for any portion of the requisite period. As a result, this affidavit is found to be lacking in detail. In addition, although not required, the affiant failed to provide documentation confirming his identity and presence in the United States during the requisite period.

At his interview with an immigration officer on October 31, 2005, the applicant stated that he had not gone to school and had not worked because he was too young. This statement is inconsistent with the applicant's written statement on Form I-687, where the applicant indicated he worked as a street vendor for more than 23 years.

At the interview, the applicant provided additional documentation including a travel certificate from Senegal Tours. The certificate explains that Senegal Tours issued an airplane ticket to the applicant from [REDACTED] to [REDACTED] to Montreal, and from Montreal to [REDACTED] to [REDACTED] round-trip. The ticket departed November 11, 1981 and returned November 30, 1981. It is noted that this travel certificate

does not specifically confirm the applicant entered the United States in 1981. The applicant also provided an affidavit from [REDACTED]. Ms. [REDACTED] stated, "I have known [the applicant] before December 31, 1981 in New York." This affiant failed to explain how she became acquainted with the applicant. In addition, she failed to confirm the applicant resided in the United States for any portion of the requisite period. As a result, this affidavit is found to be lacking in detail. In addition, although not required, the affiant failed to provide documentation confirming her identity and presence in the United States during the requisite period.

In response to a Notice of Intent to Deny (NOID) issued on January 23, 2006, the applicant provided an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated, "I have known [the applicant] before December 31, 1981 in New York. I can also bear witness to being fully aware of [the applicant's] continuous presence in the [United States] until May 4, 1988." This affiant failed to explain how she became acquainted with the applicant. As a result, this affidavit is found to be lacking in detail. In addition, although not required, the affiant failed to provide documentation confirming her identity and presence in the United States during the requisite period.

In denying the application the director noted that the affidavit from [REDACTED] was not accompanied by proof of the relationship between the applicant and the affiant, and evidence that the affiant resided in the United States during the requisite period. The director found the applicant ineligible for temporary resident status as he was incapable of meeting the necessary residency or continuous physical presence requirements.

On appeal, the applicant provided a new affidavit from [REDACTED], together with the affiant's identity documentation. In this affidavit, the affiant provided some detail regarding how she became acquainted with the applicant. The affiant also provided her driver's license and birth certificate to demonstrate that she was born and raised in the United States. However, it is noted that the birth certificate lists the name [REDACTED] while the driver's license lists the name [REDACTED]. [REDACTED] No explanation is provided regarding the different last name that is listed on the birth certificate. This discrepancy calls into question the identity of the affiant and her claim to have been born and raised in the United States as her means of establishing presence in the United States during the requisite period.

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 detail or are supported by inconsistent documentation. Specifically, the affidavits from Mr. [REDACTED] and Ms. [REDACTED] fail to explain how the affiant became acquainted with the applicant and fail to confirm the applicant resided in the United States for any portion of the requisite period. Ms. [REDACTED] provided a birth certificate that did not match the name listed on her driver's license and on both of her affidavits. Lastly, the applicant listed employment as a vendor during the requisite period on his Form I-687 but indicated in his interview with an immigration officer that he had not worked.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and his statements during the interview with an immigration officer, the contradictions between the affidavits and supporting documentation, and the applicant's 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.