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FILE:

MSC 05 248 10588

Office: NEWARK

Date: DEC 20 2007

IN RE:

Applicant:

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:

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, Newark, 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, on June 5, 2005. The 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. The director determined that the extent and credibility of the evidence submitted by the applicant was insufficient. Therefore, the 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 he denied the application.

On appeal, counsel for the applicant asserts that all evidence submitted was bona fide and genuine, and the director provided no reason as to why the evidence was not considered favorably. Counsel contends that all documentation submitted warranted further consideration.

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)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. 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.* 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 June 5, 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 address in the United States during the requisite period to have been at [REDACTED] New York, New York, from August 1981 until March 2001. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant showed that, during the requisite period between 1981 and the end of the initial legalization application period in May 1988, he worked at [REDACTED] at [REDACTED] in New York from April 1981 until June 1986, and at [REDACTED] at [REDACTED] in New York from August 1986 until November 1988.

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).

The applicant submitted an affidavit in support of his application in which he stated that he entered the United States without inspection on March 25, 1981 and departed the country only one time during the requisite period, for less than 45 days. In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following:

- A photocopy of a form-letter "Affidavit of Witness" from [REDACTED] who states that he resides at 3 [REDACTED] and that he has personally known and been acquainted with the applicant in the United States. Though not required to do so, the affiant provided a photocopy of his New York driver's license as proof of his identify. He states that to his personal knowledge, the applicant resided at [REDACTED] New York, New York, from March 1984 until March 2001. It is noted that it is apparent that correction fluid has been utilized to change the applicant's claimed dates of residence at this address. The dates written over the correction fluid were clearly not made by the same person who completed the rest of the information on the affidavit, as the handwriting is significantly different. There is information requested in this "fill in the blank" format affidavit which [REDACTED] neglected to provide, such as the affiant's ability to date the beginning of his acquaintance with the applicant in the United States, and the longest period during the residence described in which he has not seen the applicant. [REDACTED] does not attest to have any knowledge of the applicant's residence in the United States prior to March 1984, nor does he establish how he met the applicant, in what capacity he knows him, how frequently he saw him during the requisite period, or provide any details of the events and circumstances of his relationship with the applicant that would lend credibility to the claim that he has in fact known the applicant for 21 years and has personal knowledge of his residences. Given that the affiant indicates that the applicant resided at the affiant's current residential address for a period of 17 years, the lack of detail is significant, and [REDACTED] testimony has limited probative value. Further, because the affidavit appears to have been altered, possibly after it was notarized, doubt is cast on the testimony therein.

In addition, it is noted that the applicant later submitted photographs purported to show the applicant in the company of [REDACTED] in 1981 and 1983, thus conflicting with [REDACTED] testimony that he has personal knowledge of the applicant's presence in the United States only since 1984. This conflicting evidence raises questions regarding the credibility of both the affiant's testimony and the accuracy of the dates handwritten on the photographs.

- A photocopy of a form-letter affidavit from [REDACTED], who states that he resides at [REDACTED] in Kearny, New Jersey. Though not required to do so, the affiant provided a copy of his New Jersey driver's license. [REDACTED] statement is nearly identical to [REDACTED], but he does not provide the applicant's specific address of residence in either New York, New York, or in Kearny, New Jersey. He states that he knows that the applicant resided in New York from March 1981 to March 2001, but this affidavit also shows signs of having been altered with respect to the date on which the applicant first resided in New York. He does not indicate how,

when or under what circumstances he first met the applicant, indicate how frequently he was in contact with him during the requisite period, nor provide any details regarding any periods of time during which he did not see the applicant. Because of its significant lack of detail, the affidavit has limited probative value.

- Photocopies of form-letter affidavits from [REDACTED] and [REDACTED], both New Jersey residents, which are essentially identical in content to the affidavit provided by [REDACTED] although with no apparent alterations. The same deficiencies discussed above also apply here, as there is no indication as to how and when the affiants met the applicant, what their relationship was during the requisite period, whether the affiants themselves resided in the United States during the requisite period, or how they came to have direct, personal knowledge of the applicant's continuous residence in the United States. Again, the significant lack of detail that would corroborate the credibility of the affiants' claimed relationship with the applicant diminishes the probative value of these affidavits.
- Copies of IRS Forms 1099, Miscellaneous Income and Forms W-2, Wage and Tax Statement, issued to the applicant for employment during the 1989, 1988 and 1987 tax years. All of the submitted documents indicate that the applicant's address at that time was [REDACTED] New York New York, not [REDACTED] as stated on the applicant's Form I-687 and in [REDACTED]'s affidavit.
- A notarized letter from [REDACTED], dated January 7, 2006, who states that the applicant is a good friend of his family and that he has known him since 1981, when he first met him at a friend's birthday party. While [REDACTED] indicates that the applicant was in the United States prior to January 1, 1982, his testimony is lacking in detail considering his claim of being a friend to the applicant for 25 years. He does not identify where he met the applicant, how frequently he had contact with him, nor provide verifiable information, such as the applicant's specific addresses of residence, or his own address in the United States during the requisite period. As this letter is significantly lacking in detail, minimal weight can be accorded to it in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A notarized letter from [REDACTED], a resident of Bayonne, New Jersey. [REDACTED] states that he has known the applicant since 1984, as they both worked at [REDACTED] at [REDACTED] in New York. [REDACTED] does not indicate the dates he or the applicant worked at [REDACTED], how frequently he saw the applicant during the requisite period, whether there were periods in which he did not see the applicant, or whether the applicant has direct personal knowledge of the applicant's continuous residence in the United States through the date on which he attempted to file a completed legalization application period between May 1987 and May 1988. [REDACTED]'s statement has no probative value in establishing the applicant's residence in the United States prior to 1984, and, because of its lack of detail, has only limited probative value in establishing his residence in this country thereafter. Furthermore, although [REDACTED] states that he met the applicant in 1984, the applicant later submitted a photograph purportedly depicting [REDACTED] and the applicant together in "Winter 1982." This

inconsistency casts doubt on both the credibility of the information provided by the Mr. Alberto and the dates that are written on the photographs.

The applicant was interviewed under oath by a CIS officer in connection with the instant application on January 11, 2006. On that date, director issued a request for additional documentation, including credible documentary evidence that the applicant continually resided in the United States in an unlawful status during the requisite period. The director advised the applicant that persons submitting affidavits to prove his eligibility must provide valid evidence of their identity, some proof that they were present in the United States during the statutory period, and documentary proof that there is a relationship between the applicant and the persons submitting affidavits.

In a response dated February 6, 2006, the applicant submitted the following:

1. Four original envelopes addressed to the applicant at [REDACTED] New York, New York. The envelopes bear Brazilian postage stamps and postmarks indicating that they were mailed from Brazil in December 1981, September 1982, September 1983, and February 1984. It is noted that the applicant indicated on Form I-687 that he lived at [REDACTED] Apt. 26 from August 1981 until March 2001, not on [REDACTED]
2. A notarized letter dated January 18, 2006 from [REDACTED], Resident Manager, printed on the letterhead of "The Cort" located at [REDACTED] in New York, New York. [REDACTED] states that the applicant was a tenant at [REDACTED] from approximately 1982 until 1985, always paid his rent, and left in good standing. [REDACTED] does not state whether this information came from his personal recollection or from records maintained by the building's owner or manager, nor does he indicate whether he was actually employed in the building in question during the early 1980s. No corroborating evidence, such as copies of lease agreements or rent payments, were provided and the source of the affiant's information is unclear. [REDACTED] statement also conflicts with the applicant's statement that he resided at a single address, [REDACTED], from August 1981 until March 2001.
3. A photocopy of the applicant's New York State driver's license issued on August 26, 1986. The address listed on the license is [REDACTED], New York, New York. While this document would appear to confirm the applicant's presence in the United States as of August 2006, the address does not match exactly that provided elsewhere in the record. Regardless, the driver's license does not corroborate the applicant's claim of continuous residence in the United States since 1981.

On April 26, 2006, the director issued a Notice of Intent to Deny the application. The director observed that the affidavits submitted with the initial application were not accompanied by actual evidence that a relationship existed between the applicant and the respective affiants, or affidavits that the affiants were actually present in the United States from 1981 until 1988. The director acknowledged the newly submitted evidence, but noted that no supporting evidence was submitted with the letter from [REDACTED] to establish the applicant's residence at the claimed address. The director also acknowledged receipt of the

envelopes, but found that they established, at most, that the applicant was in the United States on four separate occasions. The director further determined that one of the envelopes submitted was suspect because it had an address that appeared to be written over the foreign postal cancellation stamp. The director afforded the applicant 30 days in which to submit further evidence in support of his application.

In a response dated May 25, 2006, the applicant submitted the following:

1. A notarized letter dated May 12, 2006 from [REDACTED], currently a resident of Newark, New Jersey, who states that he has known the applicant since 1982. [REDACTED] provided evidence of his identify in the form of a birth certificate, a U.S. passport and a New Jersey driver's license. The affiant states that the applicant assisted him with a home renovation project at his home in Asbury Park, New Jersey, and that he has employed the applicant on other projects. Here, the affiant does not indicate how frequently he had contact with the applicant during the requisite period, whether there were any periods in which he did not see the applicant between 1982 and 1988, or whether he had direct, personal knowledge of his addresses of residence during this time. He also did not provide even approximate dates of the "other projects" on which the applicant is claimed to have worked. It is noted that the applicant indicated on his Form I-687 that he was employed as a bus boy and as a dishwasher in New York City restaurants between 1981 and 1988, but did not indicate that he was involved in providing services for home renovation projects in New Jersey during this time. Because of its significant lack of detail and possible conflict with the applicant's own statements, this affidavit will be afforded limited probative value in establishing the applicant's continuous residence in the United States during the requisite period.
2. An affidavit of [REDACTED], who states that he has resided at [REDACTED] in New York City since 1970. [REDACTED] provides a copy of his New York State driver's license as proof of his identity. [REDACTED] states that he has been a friend of the applicant since meeting him at a birthday party at [REDACTED] restaurant in January 1982. He states that he saw the applicant at the applicant's residence at [REDACTED] at least once a week between February 1982 and November 2001, when the applicant moved out of the neighborhood. [REDACTED] did not state that he had any knowledge of the applicant's residence in the United States prior to January 1, 1982, nor did he provide any proof of his claimed 25-year relationship with the applicant. In addition, as noted above, the applicant stated that he lived at a different address, at [REDACTED] during the period in question.
3. Six color photographs claimed to show the applicant with friends, including some of the affiants, during the 1980s. There are handwritten notations on the back of the photographs identifying their dates as "Winter 1981," "Winter 1982," "Thanksgiving 1983," "Winter 1983," and "Spring 1984." The notations indicate that the photographs were taken in New York City and upstate New York. Three of the six photographs include notations specifically identifying the applicant. As noted above, one photograph, notated "Winter 1982" identifies two of the pictured men as the applicant and [REDACTED]. [REDACTED] stated that he first met the applicant in 1984. Similarly, [REDACTED] also claims to have personal knowledge of the applicant's residence in the

United States only since 1984, while two of the photographs identify him as being with the applicant in New York in 1981 and 1983. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

4. An original envelope, mailed from Brazil in December 1984, addressed to [REDACTED] at [REDACTED], New York, New York.
5. An original envelope, mailed from Brazil in December 1986, addressed to [REDACTED] at [REDACTED] New York New York.
6. An original envelope, mailed by [REDACTED] at [REDACTED] to a recipient in Brazil on June 7, 1987.

The director denied the application on August 3, 2006. In denying the application, the director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act. The director specifically noted that none of the affidavits were accompanied by evidence of an actual relationship between the applicant and the respective affiants.

On appeal, counsel for the applicant stated that all evidence submitted, including affidavits, are bona fide and genuine, and that all affiants are willing and able to confirm their statements. Counsel stated that the Notice of Decision did not specify why the documents submitted were not considered favorably. Counsel asserts that all documents and evidence submitted warrant further consideration.

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).

Here, the record contains evidence of the applicant's residence in the United States during the 1986 to 1988 period. However, the inconsistencies catalogued above regarding the applicant's residence in the United States raise questions regarding the credibility of his claim of continuous residence in the United States since prior to January 1, 1982. As noted above, the applicant claimed that he resided at [REDACTED] from 1981 until 2001. Only one item of evidence, the affidavit from [REDACTED], confirmed the applicant's residence at this address. However, as noted above, this particular affidavit was also visibly altered and therefore, its probative value and credibility are questionable. The applicant's claimed former landlord indicates that he resided [REDACTED] from 1982 until 1985 only, while the affidavit of [REDACTED] indicates that the applicant resided at this address from at least 1982 until 2001. As discussed above, the only

affiants who claimed to have knowledge of the applicant's residence in the United States since prior to January 1, 1982 provided only form-letter affidavits so deficient in detail that they can be given no significant probative value.

Further, this applicant has provided only minimal contemporaneous evidence of residence in the United States relating to the 1981-86 period that can be clearly associated with him. He has submitted attestations from individuals that lack detail and can be given very little weight. The photographs submitted, while they ostensibly show the applicant's presence in the United States on several occasions during the requisite period, are insufficient to establish his continuous residence in this country. As discussed, the dates on two of the photographs conflict with information provided by [REDACTED] and [REDACTED], and as such, the handwritten dates on the photos, as well as the testimony of the affiants, can be called into question.

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 inconsistencies in the record concerning the applicant's address of residence, the inconsistencies between the testimony of the affiants and the photographs submitted, and the applicant's reliance upon affidavits 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.