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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: DEC 21 2007

MSC 05 347 11154

IN RE: Applicant: [redacted]

PETITION: 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 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 September 12, 2005. The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director observed several inconsistencies in the evidence submitted in support of the instant application. Therefore, the district director concluded 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, counsel for the applicant addresses certain inconsistencies outlined in the director's decision, and asserts that any inconsistencies are minor, immaterial and based on the applicant's inability to reconstruct poorly-recalled events that occurred 20 years ago. The applicant submits additional evidence in support of the appeal.

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)(1).

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)(1) 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States for the duration of the requisite period. 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 September 12, 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 indicated that he has resided at [redacted] in Bronx, New York from January 1980 until the present time. At part #33, where applicants were asked to list all employment in the United States dating back to January 1, 1982, the applicant indicated that he was employed at "Jerod Hot Bagle" in Brooklyn, New York from January 1982 until September 1988, and employed at "Laurel Lee Restaurant, Inc." at [redacted]t in New York, New York from October 1988 until the present time. It is noted that the applicant was only 14 years old in January 1982, when he claims to have commenced employment in the United States. At part #32, where applicants were asked to list all absences from the United States since January 1, 1982, the applicant stated that he traveled to Canada to see a relative from May 1987 to June 1987.

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 since prior to January 1, 1982, the applicant submitted a letter from [redacted], who stated that the applicant "has been employed at this restaurant since October 1988 as floor manager." The letter is a photocopy, is not notarized, and is dated November 16, 2000. The address on the letterhead is [redacted] Street in New York City, but the name of the employer is not provided. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from

employers should be on the employer letterhead stationary, if the employer has such stationary, and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, the letter from Mr. [redacted] does not meet any of these requirements. Regardless, the letter does not address the applicant's residence or employment during the requisite time period between prior to January 1, 1982 and May 1988 and is therefore irrelevant.

The applicant also submitted a photocopy of two pages of an expired Bangladeshi passport which was issued by the Bangladesh Consulate General in New York on April 19, 1988. While this document confirms the applicant's presence in the United States in April 1988, it is of no probative value in establishing the applicant's continuous residence in the United States since 1981. No other evidence was submitted in support of the initial application.

On April 4, 2006, the applicant was interviewed under oath by a CIS officer. He testified that he first entered the United States in June or July of 1981 with his father, which was inconsistent with his statement on Form I-687 that he has resided in New York since January 1980. The applicant stated that his only absence from the United States between 1982 and May 1988 was a short trip to Mexico in 1986, which was inconsistent with his statement on Form I-687 that his only travel outside the United States was a trip to Canada in 1987. The applicant stated that he initially lived in Texas and moved to New York in 1986, where he worked in a restaurant. This information also conflicts with the applicant's statement that he has resided at the same address in Bronx, New York since 1980. The applicant stated that he attended Manhattan Community College from 1989 to 1990, but indicated that he was always home-schooled prior to that time.

In the notice of intent to deny issued on April 4, 2006, the district director questioned the credibility of the applicant's claimed residence in the United States since prior to January 1, 1982. The director requested proof of the applicant's residency at [redacted], New York for the period claimed on the Form I-687, January 1980 until the present. Further, the director requested "current and proper evidence" of the applicant's employment at Laurel Lee Restaurant, noting the deficiencies addressed above with respect to the letter provided by [redacted]

In response, the applicant submitted a notarized affidavit, in which he states he entered the United States with his father in June 1981 by crossing the U.S.-Mexico border near El Paso, Texas, and shortly afterwards traveled to New York, where they resided in Flushing for approximately 6 months, before moving to [redacted] in Bronx, New York. The applicant stated that he has lived at this address continuously except for two short stays

[1] The applicant claimed on Form I-700 to have worked as a farm laborer in Waco, Texas from July until November 1985; however, his claimed employer later admitted to providing fraudulent documentation for special agricultural worker applicants and stated that no alien had worked for him between May 1, 1983 and May 1, 1986. Thus, his application for temporary residence as a special agricultural worker was denied.

in Texas. The applicant stated that from August through November 2005, he resided and worked with his father in Waco, Texas where they performed farm labor. He further stated that he returned to New York in early December 1985 and commenced part-time employment with "Café Un Deux Trois (Laurel Le[e] Corp.)" at [redacted] in New York, New York, where he worked until April 2004. The applicant stated that he took a short trip to Mexico in 1986, which led to the rejection of his completed legalization application when he tried to apply in June 1987 during the initial application period.

In support of the assertions contained in his response, the applicant submitted what is described as a "lease renewal statement from the landlord" dated November 4, 1982. The document is on the letterhead of [redacted] located at [redacted], and is addressed to and ostensibly signed by the applicant. It is noted that the applicant was 14 years old on November 4, 1982, and the AAO finds it questionable that he was a party to a lease agreement at that time, particularly given his claim that he resided with his father during the requisite period between 1981 and 1988.

The applicant also submitted a letter dated May 3, 2006 on the letterhead of "Café Un Deux Trois,"[2] located at [redacted] New York, New York. This letter, which is also signed by [redacted] indicates that the applicant was employed at the restaurant from 1985 until 2004. This statement is inconsistent with both Mr. [redacted] and the applicant's previous statements that the applicant began working for this restaurant in October 1988. Mr. [redacted] offered no explanation for the material change in his testimony. Furthermore, the information contained in this letter is inconsistent with the applicant's sworn oral testimony that he initially lived in Texas and moved to New York in 1986. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Furthermore, like the previous letter submitted by Mr. St. Louis, the letter does not meet any of the requirements for employment letters set forth at 8 C.F.R. § 245a.2(d)(3)(i), which are discussed above.

The letter from Mr. [redacted] was accompanied by a photocopy of an undated photograph of the applicant with [redacted] and Mrs. [redacted] claimed to be taken at Café Un Deux Trois, and a note to the applicant ostensibly signed by the President and First Lady. While this photograph appears to confirm that the applicant has in fact worked at a restaurant, it falls significantly short of establishing his continuous residence in the United States for the duration of the requisite period.

The applicant submitted a copy of his Social Security Statement issued to him by the Social Security Administration on July 25, 2005, which reflects that the applicant had no earnings in the United States subject to social security tax prior to 1989. Finally, the applicant provided a "Citation of Achievement" issued to him by the

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[2] The evidence in the record suggests that "Café Un Deux Trois" is a trade name for [redacted], Inc., a New York corporation established in 1977. The director determined that the letter from Mr. [redacted] was not credible because the entity "Café Un Deux Trois" was not found to be an established entity. Although the AAO does not find the content of the letter to be credible or probative for the reasons discussed, the evidence of record does resolve the perceived inconsistency with respect to the name of the employer and the existence of such entity.

Borough of Manhattan Community College on August 1, 1991, for completion of a "Pre-Freshman Summer Program."

The district director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on July 12, 2006. The director emphasized the inconsistencies in the applicant's testimony and further found that the letter from [redacted] was not credible because public records held by the State of New York showed that this entity was registered in 2000, while the letter was dated 1983.

On appeal, counsel for the applicant emphasizes the applicant's current poor health, and states that the applicant "has striven hard to reconstruct events that happened over twenty years ago and are poorly recalled." Counsel asserts that "if there are contradictions in his testimony, it simply reflects the fact that he has not had a chance to parse his experiences more carefully and refresh his recollection after making his initial claim." Counsel contends that any inconsistencies are "minor and immaterial."

Counsel specifically addresses the director's finding that the letter from [redacted] was not credible because the entity was not incorporated until 2000. Counsel states that the entity was registered in 1990, but the owner of the company, [redacted] was the owner of the building outright from 1987 and used his initials, "DNC," from that date. The applicant has provided an unsigned, undated letter, ostensibly from [redacted] stating that he is the principal shareholder of "DNC" and states that he has utilized the name "DNC" since acquiring "the building" in 1987. The letter states that a deed and driver's license are attached, but these documents have not been provided for review. Notably, the letter from Mr. [redacted] does not address the more relevant question of whether he is able to confirm that the applicant actually resided at [redacted] since 1980, as claimed by the applicant on his Form I-687.

It is noted that this explanation also does not account for the issuance of a letter on the letterhead of [redacted] in November 1982, given Mr. [redacted] statement that he began using the name "DNC" five years later. Further, as discussed above, the fact that the letter identifies the applicant, who was then a 14-year-old child, as the tenant and a party to a lease agreement, seriously undermines its already dubious credibility. The applicant has provided no other evidence, such as rent receipts, subsequent lease agreements or renewals, evidence of mail received at the claimed address, or other documentation to corroborate his claim that he resided at the same address for approximately 25 years.

Overall, the testimony and evidence submitted with the instant application is fraught with inconsistencies. The applicant claims to have resided in the United States since January 1980, but later stated that he entered the United States for the first time in June or July 1981. The applicant stated on Form I-687 that he has lived in only one apartment in Bronx, New York since entering the United States, but later testified under oath that he originally lived in Texas and moved to New York in 1986. The applicant and his employer have provided inconsistent testimony regarding his dates of employment during the requisite period. The applicant has consistently claimed that he only traveled outside the United States one time during the requisite period. However, he initially claimed that he traveled to Canada in 1987, and later claimed that his sole trip was to Mexico in 1986.

The applicant has not submitted any contemporaneous evidence relating to the requisite period that would assist in pointing to where the truth lies. The only document that appears to relate to the period in question is

the letter from the applicant's landlord which, for the reasons discussed above, has no probative value. In this case, the discrepancies catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

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). However, this applicant has not provided any probative contemporaneous evidence of residence in the United States relating to the 1981-88 period, nor provided attestations from anyone who claims to have any knowledge of his continuous residence during this period.

The absence of sufficiently detailed, consistent 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 inconsistent testimony and reliance upon documents with suspect credibility and 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.