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

41

[REDACTED]

FILE: [REDACTED]
MSC-05-284-11828

Office: NEW YORK

Date: DEC 26 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:

[REDACTED]

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. The 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 denied the application for failure to demonstrate eligibility for temporary resident status.

On appeal, counsel for the applicant stated that the documentation and oral testimony provided by the applicant were sufficient for the director to approve the application; and the director's decision is arbitrary and an abuse of discretion.

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).

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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided 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 Supplement to Citizenship and Immigration Services (CIS) on July 11, 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 listed multiple addresses but failed to list the dates during which she lived at each address. The applicant listed the following Brooklyn, New York addresses: [REDACTED] and [REDACTED]. The applicant failed to state on her Form I-687 that she resided continuously in the United States during the requisite period. This casts some doubt on her claim to meet the residence requirements for temporary resident status. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, "None." At part #33 where applicants were asked to list all employment in the United States since entry, the applicant stated, "None."

The applicant submitted multiple declarations in an attempt to establish continuous unlawful residence in the United States during the requisite period. In the declaration from [REDACTED] MD dated December 6, 2005, Dr. [REDACTED] stated that his records indicate he treated the applicant on "various occasions." Her first treatment was on January 16, 1982, and a follow-up occurred on January 20, 1982. Dr. [REDACTED] stated that he subsequently saw the applicant for "a couple of visits" in 1987. This declaration indicates Dr. [REDACTED] consulted the applicant's records to prepare his declaration, yet the applicant failed to submit copies of these records to support her claim of

residence during the requisite period. This declaration indicates the applicant was present in the United States in January 1982 and during 1987, yet it does not specifically confirm that she resided in the United States during the requisite period.

The applicant also submitted a declaration from Reverend Dr. [REDACTED], pastor of Ghana Wesley United Methodist Church, dated November 28, 2005. This declaration indicates Rev. [REDACTED] met the applicant when she joined the church's prayer group "sometime in 1987." Rev. [REDACTED] stated that he met the applicant when she was living at [REDACTED]. This information is inconsistent with the information provided on the applicant's Form I-687. Specifically, the applicant listed only [REDACTED] rather than [REDACTED], on her Form I-687. In addition, the applicant failed to list Wesley United Methodist Church when asked to list all affiliations or associations. These inconsistencies call into question Rev. [REDACTED] ability to confirm the applicant resided in the United States during the requisite period. Lastly, this declaration fails to provide information regarding the applicant's residence at any time other than 1987.

The applicant provided a declaration from the general secretary of [REDACTED] of USA Inc. dated November 30, 2005. The name of the general secretary is illegible. This declaration states that the applicant has been a member of the organization since 1982. This declaration does not specifically confirm the applicant resided in the United States during the requisite period. The information in this declaration is also inconsistent with the information provided on the Form I-687, where the applicant failed to list [REDACTED] of USA Inc. when asked to list all affiliations or associations. Lastly, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant provided a declaration from Mrs. [REDACTED] BSN, dated November 28, 2005. Mrs. [REDACTED] stated that the applicant was a private home attendant and took care of Mrs. [REDACTED]'s children from August 1982 to September 1987. This is inconsistent with the information provided on the Form I-687, where the applicant failed to list any employment positions when asked to list all employment since she entered the United States. This inconsistency calls into question Mrs. [REDACTED]'s ability to confirm the applicant resided in the United States during the requisite period. This declaration also fails to conform to regulatory standards for letters from employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant submitted a declaration from [REDACTED] dated December 3, 2005. The declarant stated that she has known the applicant since 1985. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The applicant included a declaration from [REDACTED] dated November 29, 2005. The declarant stated that she had known the applicant since 1981 when she met the applicant at a friend's house, where the applicant lived, at [REDACTED] in Brooklyn. When the declarant's friend died, the applicant moved to stay with the declarant for about one year, and then moved to the Bronx where she lives now. This declaration is inconsistent with the information provided on the Form I-687 where the applicant indicated she had lived at [REDACTED], as opposed to [REDACTED]. This inconsistency calls into question the declarant's ability to confirm the applicant resided in the United States during the requisite period. In addition, this declaration does not specifically state that the applicant resided continuously in the United States throughout the requisite period. It merely states that the applicant lived at [REDACTED] in 1981 and that the applicant moved to stay with the declarant in 1996.

The applicant provided a declaration from [REDACTED] dated December 1, 2005. Mr. [REDACTED] stated that he has known the applicant since 1982 when he was a member of Hope Revival church with the applicant. At that time, the applicant lived in the neighborhood of the church. In 1992, Mr. [REDACTED] stopped going to Hope Revival church. When, later, Mr. [REDACTED] joined the [REDACTED] United Methodist Church, he saw that the applicant was already a member of the church. This declaration does not specifically confirm the applicant resided in the United States throughout the requisite period. It merely indicates the declarant met the applicant in 1982 at a church where they were both members, and that sometime after 1982 but before 1992 the applicant belonged to another church. The declaration also does not confirm the applicant entered the United States prior to January 1, 1982. Lastly, the declaration is inconsistent with information provided on the Form I-687, where the applicant failed to list Hope Revival church when asked to list all affiliations or associations with churches.

In denying the application the director determined the applicant failed to submit additional evidence in response to the NOID. The director denied the application for the reasons stated in the NOID. The NOID stated that the applicant failed to demonstrate eligibility for temporary resident status. Specifically, the director erroneously stated that the applicant failed to meet her burden of proving by a preponderance of the evidence that she continuously unlawfully resided in the United States from January 1, 1982 through May 4, 1988, instead of from before January 1, 1982 through May 4, 1988. The director also suggested that the applicant was inadmissible to the United States based on fraud or willful misrepresentation of a material fact in violation of Section 212(a)(6)(C)(i) of the Act. However, the director failed to specify the basis of her determination that the applicant had engaged in fraud or willful misrepresentation. The director's errors are harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel for the applicant stated that the documentation and oral testimony provided by the applicant were sufficient for the director to approve the application; and the director's decision is arbitrary and an abuse of discretion. It is noted that there is no evidence in the record indicating the decision was arbitrary or that the director abused her discretion. Counsel failed to provide additional information explaining the view that the decision was arbitrary. As explained above, any error in the director's decision is harmless.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. She has submitted attestations from several people concerning that period. The declarations from Dr. [REDACTED] and [REDACTED] do not specifically confirm the applicant resided in the United States during the requisite period. The declaration from Rev. [REDACTED] conflicts with information stated on the Form I-687 and fails to confirm the applicant's residence in the United States at any time other than 1987. The declaration from [REDACTED] of USA Inc. does not specifically confirm the applicant resided in the United States during the requisite period, conflicts with the applicant's Form I-687, and does not conform to regulatory standards. The declaration from Mrs. [REDACTED] conflicts with the applicant's Form I-687 and fails to conform to regulatory standards. The declaration from [REDACTED] conflicts with the applicant's Form I-687 and does not specifically state that the applicant resided continuously in the United States throughout the requisite period. The declaration from Mr. [REDACTED] does not specifically confirm the applicant resided in the United States throughout the requisite period, does not confirm the applicant entered the United States prior to January 1, 1982, and conflicts with her Form I-687.

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 contradictions between the applicant's statements on her application and the statements in the declarations she provided, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.