U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

L 1

[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 2 4 2007

MSC-04-329-11236

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

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. 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 denied the application.

On appeal, counsel for the applicant asserts that the applicant has established his unlawful presence in the United States prior to January 1, 1982.

On January 3, 2007, the applicant submitted an amended Form I-687, Application for Status as a Temporary Resident, and four notarized statements entitled "Affidavit of Witness." The applicant's cover letter requests that this evidence be considered in support of his appeal. The supplemental evidence will not be considered in this proceeding. The regulations do not allow an applicant an open ended or indefinite period in which to supplement an appeal once it has been filed. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after the date of the denial notice. 8 C.F.R. § 245a.2(p). Whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. 8 C.F.R. § 103.5a(b). The applicant's Form I-694, Notice of Appeal, was timely received on February 28, 2006. Counsel for the applicant indicated on the Notice of Appeal that his written statement is attached and he did not provide any additional evidence. The applicant's submission of additional evidence nearly one-year after the filing of his appeal will, therefore, not be considered in this proceeding.

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. 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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, with CIS on August 24, 2004. The applicant signed this application under penalty of perjury, certifying that the information contained in the application is true and correct. Part 30 of the application requests the applicant to list his residences in the United States since his first entry. The first residence the applicant provided on his application was [redacted] Bronx, New York from April 1988 until May 1989. The applicant did not provide any other residence information prior to April 1988. Part 33 of the application requests the applicant to provide his employment history since his entry. The application specifically indicates that the applicant should show his most recent employment first and then all of his previous employment dating back to January 1, 1982. The first employment the applicant provided on his application was [redacted] Brooklyn, New York from December 1989 until April 1995. The applicant failed to provide the name of his employer and his occupation. The applicant did not provide any other employment information prior to December 1989. The information contained in the applicant's Form I-687 implies that he has not continuously resided in the United States during the requisite period.

Documentation contained in the applicant's record also supports a finding that he has not resided in the United States during the requisite period. On October 23, 1997, the applicant filed with the Service a Form I-485, Application to Adjust Status, concurrently with a Form I-130, Petition for Alien Relative. Part 3B of the applicant's Form I-485 requests the applicant to list his spouse and children. The applicant responded that his has two children born in Haiti, T[redacted] and [redacted] whose dates of birth are March 12, 1984 and September 30, 1986, respectively. On April 18, 2003, the applicant filed with CIS a Form I-485, Application to Adjust Status, based his eligibility under the Legal Immigration Family Equity (LIFE) Act. The applicant also indicated on this application that he has two children born in Haiti, with their respective dates of birth as March 12, 1984 and September 30, 1986. It should be noted that the applicant signed the Form I-485 applications under penalty of perjury, certifying that the information is true and correct. The information contained in these two applications indicates that the applicant was residing in Haiti during the requisite period of continuous residence. The applicant's record also contains a Form G-325A, Biographic Information Sheet, submitted with the Form I-485 he filed pursuant to the LIFE Act. This form requests the applicant to list his last address outside the United States. The applicant responded that he resided in Haiti from September 1970 until October 1985. This information again indicates that the applicant was residing in Haiti during the requisite period of continuous residence.

On May 17, 2004, the applicant withdrew his Form I-485 application, filed under the LIFE Act, after testifying that he first entered the United States on October 15, 1988. The director's notice of intent to deny the applicant's Form I-687 application addresses the inconsistencies in the applicant's record. This notice provides, "the above noted your claim [sic] of first entry to the United State[s] in March of 1980 is contradicted by the evidence in your Administrative file. On May 17, 2005, you were interviewed in connection with your Form I-485 (Application for Adjustment of Status as a Permanent Resident, based on LIFE Legalization, filed on

04/18/2003.) During the interview you testified that you first entered the United States on October 15, 1988 and withdrew the I-485." The applicant was given thirty (30) days to submit additional evidence in response to this notice. The applicant failed to submit any additional evidence within the allotted thirty day period. On appeal, counsel for the applicant neither addressed this issue nor did he submit additional evidence to overcome the finding.

On August 3, 2005, the applicant was interviewed in connection with his Form I-687 application filed pursuant to the CSS/Newman Settlement Agreements. The applicant signed a sworn statement with the following information:

> I first entered the Untied States from Haiti in March of 1980 by boat without inspection. My first absence from the United States was in July of 1983, visited Haiti [sic] (For mother's funeral and got married and have children [sic].) I reentered the United States on October 15, 1988 with B2 visa and inspected [sic] at JFK in NYC.

This sworn testimony attempts to explain the contradiction in the applicant's previous testimony that he first entered the United States on October 15, 1988. However, this sworn testimony has raised another issue regarding the applicant's eligibility for temporary resident status. An applicant for temporary residence 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). An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The applicant's sworn testimony provides that he was absent from the United States from July 1983 until October 15, 1988. Pursuant to 8 C.F.R. § 245a.1(c), if the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant's sworn testimony indicates that his over five year absence from the United States was a result of his marriage and raising children. Pursuant to *Matter of C-*, an absence on this basis is not an emergent reason.

The director's notice of intent to deny addresses the issue of the applicant's break in continuous residence. This notice provides, "[t]he above noted your departure [sic] from the United States in July of 1983 and reentry to the United States on October 15, 1988 repre[s]ent a clear break in residency as it is far in excess of a single absence of 45 days. The documents you provided as to residency include affidavits from a number of friends that may provide evidence of your being in the United States during the statutory period but do not overcome the break in re[s]idence

indicated above." The applicant was given thirty (30) days to submit additional evidence in response to this notice. The applicant failed to submit any additional evidence within the allotted thirty day period. On appeal, counsel for the applicant neither addressed this issue nor did he submit additional evidence to overcome the finding.

The applicant submitted evidence to corroborate his residence in the United States, however these documents do not overcome the finding that he has not continuously resided in the United States during the requisite period. The applicant submitted two letters from [redacted] pastor of the Eglise Baptiste Church, located in Brooklyn, New York, dated May 2, 2004 and July 3, 2004, respectively. The first letter provides, "[t]his is to certify that brother Jacques [redacted] became [sic] a member of Eglise Baptiste de la Communion Fraternelle Inc since 1988 until Present." The second letter provides, "I have known brother [redacted] since April of 1988 in New York." The applicant submitted a notarized statement from [redacted] which provides, "I have known [redacted] since Haiti and became reacquainted when we met anew in the United States on April 1988." The applicant submitted a notarized statement from [redacted], which provides, "I met [redacted] when he visited me in Boston in April 1988. We have been friends since then." These documents are corroborating evidence of the applicant's presence in the United States from April 1988 until present. Therefore, they do not corroborate the applicant's continued presence in the United States during the entire requisite period. Moreover, these statements are inconsistent with the applicant's sworn statement that he resided in Haiti from July 1983 until October 1988. The record contains a copy of the applicant's passport, which provides that it was issued in Haiti on March 29, 1988. The applicant's passport has a multiple entry B2 visa, issued on August 12, 1988 with a United States entry stamp date of October 15, 1988. This information indicates that the applicant was residing in Haiti in April 1988. These statements, therefore, cannot be afforded any weight as corroborating evidence because of the above noted inconsistencies.

The applicant has submitted three notarized statements which fail to specify the date of his residence in the United States. The applicant submitted a statement from [redacted] which provides, "I met [redacted] when he was attending her [sic] sister's wedding ceremony in Boston. We became friends and stayed in touch since then." The applicant submitted a statement from [redacted] which provides, "I have known [redacted] since he first arrived in the United States in the early 80's. We were friends in Haiti and became reacquainted when we met anew in the United States." The applicant submitted a statement from [redacted] which provides, "I have known [redacted] from Haiti and later became closer to him when he married my sister. He arrived in the United States in the early 80's." The applicant submitted a statement from [redacted] which provides, "I met [redacted] in Boston, while visiting his sister-in-law. We became friends and since then he has always kept me in his thoughts and prayers." Since these letters fail to specify the date that the author met the applicant, they do not corroborate the applicant's continued presence in the United States during the requisite period.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he has continuously resided in the United States during 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. 8 C.F.R. § 245a.2(d)(5). The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The noted inconsistencies in the applicant's record draw into question whether he actually entered the United States prior to January 1, 1982. Even if the applicant establishes that he entered the United States prior to January 1, 1982, he has failed to establish his continuous residence thereafter. The applicant signed a sworn statement that he was absent from the United States from July 1983 until October 1988. Due to this absence, the applicant has not established his 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.