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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: NOV 14 2007

MSC-05-245-10791

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-[redacted] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. [redacted] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York, and that decision 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. Specifically, the director found that the applicant failed to submit contemporaneous evidence in support of his application. She went on to say that the evidence that he did submit did not prove by a preponderance of the evidence that he was eligible to adjust status to that of a Temporary Resident. 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, the applicant asserts that he first entered the United States in 1980. He states that the director did not give sufficient weight to affidavits submitted in support of his application. He notes that he is submitting one (1) additional affidavit with his appeal from Union Baptist Church.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes

that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 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).

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 2, 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 first address in the United States to be [redacted]

[redacted] He indicates he lived there from December of 1981 until September of 1985. He then showed that he lived at [redacted] from October of 1985 until January of 1987 and then at [redacted] from February 1987 until he submitted his Form I-687. It is noted here that the applicant did not indicate an address at which he resided prior to December of 1981. It is, however, also noted that page 3 of this application is not in the record and that if page 3 of the application were present, it would include a space for indicating additional residences. At part #32 of the applicant's Form I-687 where he was asked to list all churches and organizations of which he was a member, he did not show that he was a member of any organizations or churches. At part #33 where the applicant was asked to list all places of employment since entry, he indicated that his first employment was that of a self employed street peddler on Canal Street from February of 1983 until February of 1990. The applicant indicated that he then worked on 29th Street and Avenue of the Americas beginning in March of 1990 up until the date he submitted his Form I-687. It is noted that the applicant did not indicate he worked in the United States before 1983.

The record also shows that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on in March of 2006, the applicant stated that he first entered the United States in August of 1981.

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 provided the following:

- An affidavit from [redacted]. Here, the affiant indicates that he and the applicant both attend the New Hope Community Church in Staten Island. It is noted here that the applicant has not indicated that he is a member of this church on his Form I-687. The affiant goes on to say that he first met the applicant when he was selling books on Avenue of the Americas in December of 1981. It is noted here that the applicant indicated on his Form I-687 that he sold books on Canal Street at that time and did not begin working on Avenue of the Americas until February of 1990. Here, the affiant has not stated the frequency with which he had contact with the applicant. He has failed to provide an address at which the applicant lived during the requisite period. Because this

affidavit is not consistent with other evidence in the record and because of its significant lack of detail, very little weight can be accorded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted] who states that he and the applicant attend the same church in Staten Island and that he sees the applicant "off and on." It is noted that the applicant did not indicate that he was a member of any churches on his Form I-687. The affiant goes on to say that he met the applicant at a grocery store in December of 1981. After that meeting the affiant states that the applicant resided with him for approximately five (5) months. Though the affiant did not provide the address at which he lived at the time it is noted that the applicant did not indicate that he lived at a residence for five (5) months subsequent to December of 1981. Here, the affiant does not provide the address at which he claims the applicant resided with him during the requisite period. He does not state that he knew the applicant for the duration of the requisite period, nor does he list the dates through which he saw the applicant at his church. Because of the significant lack of detail in this letter and because it is found to conflict with what the applicant showed on his Form I-687, very minimal weight can be given to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted], who states that she met the applicant while he was selling books. She states that he is a good friend and a good person. The affiant fails to indicate when she met the applicant, how frequently she sees the applicant or whether she knows that the applicant resided in the United States during the requisite period. Because there are no dates associated with statements made in this affidavit, no weight can be given to it in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since 1981 and worked in the United States since 1983. Material information regarding the applicant's employment and addresses of resident contained in the affidavits submitted as evidence in support of the application that are relevant to the 1981-88 period in question are not consistent with the applicant's Form I-687.

In denying the application, the director stated that the evidence submitted by the applicant was insufficient to establish that the applicant was eligible to adjust to Temporary Resident Status. The director noted that the applicant had not provided any contemporaneous evidence in support of his claim.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document." If a legal conclusion of a director were to be

made that an applicant could not meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--, supra.*

However, as was previously noted, the affidavits submitted by this applicant do not allow him to meet his burden of proof because they are not consistent with other evidence in the record. These inconsistencies cast doubt on the credibility of statements contained in the evidence submitted by the applicant in support of his application.

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).

On appeal, the applicant attempts to explain these contradictions. He states that he first entered the United States in 1980. It is noted here that that though the director's decision letter erroneously states that the applicant stated he entered the United States in August of 1980, notes in the record indicate that at the time of the applicant's interview with a CIS officer he indicated that he first entered the United States in August of 1981. His Form I-687 further shows his first resided at an address in the United States in December of 1981.

The applicant provides a new letter from the Union Baptist Church in support of his application. It is noted here that the letterhead on which this letter is written misspells the name of the church, indicating it is "Union Baptest Church." The AAO verified that this church is at the address noted on the letterhead but that it spells the word Baptist in the traditional manner. This letter indicates that though the records of the church are "very sketchy going back to that period of time" they show that the applicant attended church services intermittently from 1981 to 1984. It is noted that the applicant did not indicate that he had ever been a member of any churches on his Form I-687. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. As this letter is lacking in respect to those criteria, as the applicant has not previously indicated that he ever attended this church, as this letter pertains to only a portion of the requisite period and as the letter indicates that the applicant did not attend the church continuously very minimal weight can be given to this letter as proof that the applicant resided in the United States during the requisite period.

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, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only four (4) people concerning that period, which, when considered as a whole with other evidence in the record do not allow the applicant to prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

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 that the record contains inconsistencies material to the applicant's claim and given his reliance upon documents with minimal probative value, it is concluded that he has failed to establish that he maintained 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.