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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 201 12033

Office: NEW YORK Date: **SEP 06 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: 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-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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 district 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 states that all his affiants were present in the United States during the statutory period. He submits additional evidence.

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. See 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 19, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Jackson Heights, New York” from February 1981 to May 1986 and at [REDACTED] Jackson Heights, New York” from May 1986 to November 1990. At part #32, where applicants are instructed to list all absences outside the United States during the requisite period, the applicant indicated that he was in Columbia visiting his sick grandmother from November 1990 to January 1992. He did not list any absences outside the United States prior to November 1990.

During his interview with a CIS officer on January 12, 2006, the applicant stated that he and his mother first entered the United States without inspection near San Diego, California, in February 1981. He stated that he flew to New York City and resided in Jackson Heights, New York, for five years. When the CIS officer asked the applicant about his absences outside the United States during the requisite period, the applicant responded that he was in Colombia visiting his sick grandmother for three weeks in April 1984. The applicant did not list this absence on the

Form I-687. The only absence he listed on the Form I-687 was an absence from November 1990 to January 1992. This discrepancy in his claimed dates of absence outside the United States raises questions of credibility regarding the applicant's claim of continuous residence in the United States throughout the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated April 11, 2005 from [REDACTED] a resident of Jackson Heights, New York. [REDACTED] stated that he had known the applicant since November 1981. [REDACTED] explained that he was well acquainted with the applicant's mother, [REDACTED], and knew that [REDACTED] lived with her son. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in this country during the requisite period.

The applicant also submitted an affidavit dated April 8, 2005, from [REDACTED] a resident of Jackson Heights, New York. [REDACTED] stated that he had known the applicant since early 1981. [REDACTED] explained, "I know him because I know his mother, [REDACTED] and I know that he lived with her at the time at [REDACTED] in Jackson Heights, Queens." However, Mr. [REDACTED] did not provide any information as to how he met the applicant or the frequency of his contact with the applicant during the requisite period.

On January 30, 2006, the district director issued a notice informing the applicant of her intention to deny the application because he had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence in support of his claim.

The applicant, in response, submitted an affidavit dated February 24, 2006, from [REDACTED] a resident of Elmhurst, New York. [REDACTED] attested that she had known the applicant and his mother since 1982 when they started living in her neighborhood in Jackson Heights, New York. However, [REDACTED] provided no specific, detailed, and verifiable such as the applicant's addresses in this country during the requisite period to corroborate his claim.

The applicant provided an affidavit dated February 20, 2006, from [REDACTED] a resident of Flushing, New York. [REDACTED] stated that she had been friends with the applicant and his mother since 1982. [REDACTED] explained that she used to work with the applicant's mother as a cleaner when [REDACTED] first arrived in Queens. However, [REDACTED] provided no specific, detailed, and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The applicant included an affidavit dated February 15, 2006, from [REDACTED], a resident of Elmhurst, New York. [REDACTED] stated that he had known the applicant and his mother since 1981. [REDACTED] explained that he met the applicant's mother because they were both working as cleaners at that time. However, [REDACTED] provided no specific and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate his claim.

On appeal the applicant reiterates his claim of continuous residence in the United States during the requisite period. He submits a new affidavit dated June 20, 2006, from [REDACTED]. [REDACTED] repeats her statement that she has known the applicant and his mother since 1982 and that she used to work with the applicant's mother as a cleaner. [REDACTED] speaks highly of the applicant's character but she does not provide any additional verifiable testimony to verify the applicant's claim.

The applicant included a second affidavit dated June 20, 2006, from [REDACTED]. [REDACTED] repeats his statements that he has known the applicant and his mother since 1981, at which time they were residing at [REDACTED], Jackson Heights, New York."

The applicant also provided an affidavit dated June 20, 2006, from [REDACTED], a resident of Elmhurst, New York. [REDACTED] attests that she has known the applicant and his mother since 1981 and has personal knowledge that they have resided in the United States since that time. However, [REDACTED] provided no specific, detailed, and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate his claim.

Finally, the applicant submitted a second affidavit dated June 20, 2006, from [REDACTED]. [REDACTED] attests that he has known the applicant and his mother since 1981 and has personal knowledge that the applicant has lived in this country since that time. However, [REDACTED] once again failed to provide any specific, detailed, and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate his claim.

In summary, 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 six people, all of which lack sufficient specific, detailed, and verifiable information to corroborate the applicant's claim.

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 reliance on 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.