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

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: SEP 07 2007

MSC-04-268-10434

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 found that the evidence provided by the applicant was insufficient to overcome the reasons for denial specified in the Notice of Intent to Deny (NOID). As a result, the director denied the application.

On appeal, the applicant suggested the director failed to properly evaluate the submitted evidence. The applicant also suggested he had been subject to discrimination because of his heavy accent and that there had been problems with the interpreter in his interview with an immigration officer. Lastly, the applicant suggested his 5th Amendment right to due process was infringed.

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. *See* section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An applicant 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. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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 applicant 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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An applicant 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 and its credibility and amenability to verification. *See* 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period from 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 Citizenship and Immigration Services (CIS) on June 24, 2004. 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 only [redacted] New York, New York, from December 1981 to October 1990 during the requisite period. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing during the statutory period but indicated he was involved with an evangelical church in New York from 1999 to present. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Porter at Building (HDFC), 500 W. 145 St., New York, New York from January 1982 to October 1983; general helper at Superextra Meat Market, 3839 Broadway, New York, New York from October 1983 to March 1987; and painter at Riverdale Auto Body Shop, 310 W. 240 St., Bronx, New York from March 1987 to July 1990.

With his Form I-687 application, the applicant submitted three form affidavits that are virtually identical. [redacted] affirmed that the applicant lived a[redacted] New York, New York from about December 1981 to about June 1991. The affiant stated she was able to determine the date of the beginning of her acquaintance with the applicant through, "friendship with the applicant." The applicant provided affidavits from [redacted] and [redacted] in which the affiants made identical statements to [redacted] statements regarding the applicant. None of the affiants provided any information regarding the manner in which they became acquainted with the applicant. As a result, these affidavits are found to be lacking in detail.

The applicant also provided a copy of a divorce judgment that confirmed his divorce from [redacted] This divorce judgment lists the names and dates of birth of the children of the marriage as follows: [redacted] born May 13, 1987; [redacted]

[redacted] born February 28, 1985; [redacted], born August 7, 1982; [redacted], born August 23, 1981; and [redacted] June 6, 1980.

On March 6, 2006, the applicant appeared for an interview with an immigration officer in the presence of his attorney. The applicant signed a sworn statement which included the following: "I first came to the United States in 1981 . . . . I came alone . . . . I was married in Ecuador in 1979. I have three kids. They are born on July 6, 1980, August 1982 and [redacted] on May 1988. My wife came to U.S. in maybe 1990 or 1991 . . . . November 1987 is the only time I left U.S. between the statutory period." These statements are inconsistent with the applicant's divorce documentation, in that the applicant neglected to mention his child born in 1985 and his child born in 1981, and he mistakenly indicated that his son Jimmy was born in 1988 instead of 1987. In addition, the applicant's claims that entered the United States in 1981; he only left once during the requisite period, in 1987; and his wife did not come to the United States until 1990, are inconsistent with the divorce documentation indicating his wife gave birth in February 1985 and May 1987. These inconsistencies call into question whether the applicant actually resided in the United States throughout the requisite period.

In response to the NOID issued on March 6, 2006, the applicant prepared his own declaration, and submitted the declarations of three other individuals. In his declaration, the applicant claimed there was an error in the NOID. The applicant stated that he has lived in the United States since December 1981, not since November 1987. The applicant also explained that his prior wife, [redacted], had several children in Ecuador from an affair with another man. The applicant stated, "They were registered under my name, and recognized by me, because I was previously married to her at that time, and in Ecuador they register the children of a married woman under the father's name." This explanation is found not to be reasonable under the circumstances, particularly because it appears this explanation was not provided at the time of the interview. In addition, the record indicates the applicant was asked for an explanation regarding his children's dates of birth on August 19, 1992, and the applicant's response on January 19, 1993 failed to include any reference to an affair between his wife and another man. In his response to the NOID, the applicant also raised questions regarding problems with the interpretation during the interview. It is noted that the applicant's attorney was present during the interview, and there is no record of the attorney raising any question regarding interpretation at the time of the interview.

In her declaration, [redacted] stated that she has known the applicant since December 1981, when he made repairs in her apartment. She lived at [redacted], New York, New York from 1980 to the present time. The applicant, "has always been around this area." He has always answered [redacted] calls to make repairs in her apartment. Although the declarant referenced having frequent contact with the applicant, she did not specifically confirm the applicant's place of residence or that the applicant continuously resided in the United States throughout the requisite period.

In her declaration, [redacted] confirmed that she met the applicant at a supermarket in about December 1981, when the applicant was making deliveries. The applicant made repairs to [redacted] apartment. She stated that she has "always seen [the applicant] around this area,

because he has always answered [her] calls for any painting or repairs job." Again, although the declarant referenced having frequent contact with the applicant, she did not specifically confirm the applicant's place of residence or that the applicant continuously resided in the United States throughout the requisite period.

Lastly, the applicant submitted a letter from [redacted] from the Church of the Annunciation. In this letter, [redacted] confirmed that the applicant has been living in the area of the church at least since late in 1981 when church members found an apartment for the applicant. In 1982, [redacted] and his neighbors were involved in worship and activities at Annunciation Church. This letter is found to be inconsistent with the information provided by the applicant on Form I-687. Specifically, at part #31 where applicants were asked to list all affiliations or associations, the applicant listed membership in an evangelical church since 1999, but he neglected to mention his affiliation with Annunciation Church. This omission calls into question whether [redacted] can actually confirm the applicant resided in the United States during the requisite period. In addition, the letter from [redacted] does not conform to regulatory requirements for attestations by churches or other organizations. Specifically, the letter does not show inclusive dates of membership. 8 C.F.R. § 245a.2(d)(3)(v).

In denying the application, the director found that the information submitted failed to overcome the grounds for denial specified in the NOID. The director noted that the applicant's attorney was present during the interview. The attorney did not make any comment or show concern regarding the interpretation and, in fact, agreed to obtaining the assistance of the interpreter during the interview.

On appeal, the applicant re-submitted affidavits and the statement he had submitted in response to the NOID. In addition, the applicant suggested the director failed to properly evaluate the submitted evidence. The applicant also suggested he had been subject to discrimination because of his heavy accent and reiterated his statements suggesting problems with the interpreter in his interview. Lastly, the applicant suggested his 5th Amendment right to due process was infringed.

The record includes an additional Form I-687 submitted by the applicant at an earlier date. With this earlier Form I-687, the applicant submitted a copy of a lease and several declarations and letters. The lease does not contain the applicant's name and is, therefore, not relevant to his claim of residence during the requisite period. The record includes a letter from [redacted], manager of Super Extra Meat Market. This letter confirms that the applicant worked for the declarant from October 1983 to March 1987 as a general helper. This letter is consistent with the information provided on Form I-687, but it does not conform to the regulatory requirements for letters from employers. Specifically, this letter does not include the applicant's address at the time of employment, whether the information was taken from official company records, where the records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i). The record also includes a letter from [redacted] manager at Riverdale Body Shop. In this letter dated August 29, 1990, [redacted] confirmed the applicant's employment as a painter from March 1987 to the present time. This letter is generally consistent with the information provided on Form I-687, except that the position is listed on the form as ending in July 1990. However, this letter also fails to conform to regulatory standards for letters from employers. Specifically, it does not include the applicant's address at the time of employment, whether

the information was taken from official company records, where the records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.2(d)(3)(i). The record also includes a letter from [redacted]. In this letter, [redacted] confirmed that she has known the applicant since December 1981. However, [redacted] failed to confirm the applicant resided in the United States for any portion of the requisite period. In a similar letter, [redacted] also confirmed knowing the applicant since Christmas of 1981 but failed to confirm he resided in the United States at any time. Lastly, in her letter dated September 10, 1990, [redacted] confirmed she rented a bedroom in her apartment at [redacted] New York, New York to the applicant since December 1987. This letter is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant indicated on Form I-687 that he lived at [redacted] starting in December 1981. This inconsistency calls into question whether the applicant actually resided in the United States throughout the requisite period.

The record also indicates the applicant submitted two I-130/I-485 applications for permanent residence based on his marriage to a United States citizen, [redacted]. The first of these applications, submitted on April 11, 1995, included a Form G-325A Biographical Information. On this form, where applicants were asked to list the last address they had outside the United States of more than one year, the applicant listed an address in Ecuador from July 1966 until November 1987. In addition, where applicants were asked to list the last occupation they had abroad, the applicant indicated he was a salesman in Ecuador from August 1981 to November 1987. These statements are inconsistent with the information provided on Form I-687, which claims the applicant was in the United States throughout the requisite period. These inconsistencies both call into question whether the applicant actually resided in the United States during the requisite period and also tend to show the applicant was in Ecuador, rather than the United States, for a substantial portion of the requisite period.

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 affidavits that lack sufficient detail, conflict with the applicant's statements, or do not conform to regulatory requirements. Specifically, the affidavits from [redacted] and [redacted] were found to be lacking in detail. In addition, the applicant's statements in his interview with an immigration officer, as well as his divorce documentation, are inconsistent with the information provided on Form I-687. Specifically, the record of the interview and the divorce documentation indicate two of the applicant's children were born in Ecuador during the requisite period and prior to the time the applicant's first wife entered the United States. The applicant did not provide a reasonable explanation for this inconsistency. Both [redacted] and [redacted] indicated they had made frequent contact with the applicant but failed to specifically confirm the applicant's place of residence or that he had continuously resided in the United States throughout the requisite period. The letter from [redacted] is inconsistent with the information provided on Form I-687 and does not conform to regulatory requirements. The letters from [redacted] and [redacted] do not conform to regulatory requirements. The letter from [redacted] does not confirm the applicant resided in the United States at any time. The letter from [redacted] is inconsistent with the information provided on Form I-687. The information provided on Form G-325A is inconsistent with the information provided on Form I-687 and with the applicant's claim of continuous residence in the United States throughout the requisite period.

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 contradictory statements contained in the applicant's I-687 application, supporting affidavits, and Form G-325A; and given the applicant's 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.