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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

L1

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

MSC-05-209-10190

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 submitted sufficient information and documentation to overcome the reasons for denial contained in the Notice of Intent to Deny (NOID). As a result, the director denied the application.

On appeal, the applicant questioned whether the director's decision violated the Administrative Procedures Act (APA), whether the director provided the applicant with adequate notice, and whether the director violated the Paperwork Reduction Act (PRA). In addition, the applicant compared the hardship that would result to the applicant from not receiving the benefit he seeks with the hardship to the director if the applicant receives the benefit.

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 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 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. 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 Immigration and Naturalization Service (INS) 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 Citizenship and Immigration Services (CIS) on April 27, 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 the following New York, New York addresses during the requisite period: 35 Thayer Street, from January 1981 to June 1985; 507 Wasdworth New York, from June 1985 to August 1986; and [redacted], from August 1986 to October 1999. At part #31 where applicants were asked to list all affiliations or associations, the applicant listed only St. Matheris in New York, New York, from 1992 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed two trips to Ecuador to visit family, from September 1984 to October 1984 and from October 1986 to November 1986.

The applicant included multiple affidavits and letters with his Form I-687 Application. Although not required, none of the affidavits or letters were accompanied by documentation of the affiants' identity or presence in the United States during the requisite period. In his affidavit dated April 23, 2002, [redacted] explained that he was introduced to the applicant at Floridita, a restaurant in New York where the applicant was still working at the time the affidavit was written. [redacted] referred to specific contacts with the applicant in 1982, summer of 1983, 1984, winter of 1985, 1986, and February 1984. However, [redacted] did not specifically confirm that the applicant continuously resided in the United States from prior to January 1, 1982 throughout the requisite period, or for any specific portion of the requisite period. [redacted] did not provide contact information in his affidavit. The applicant also included a letter from [redacted] dated February 11, 2003 that contains a signature that has not been notarized. The signature does not appear to match [redacted] signature on his affidavit. In his letter, [redacted] stated that he has known

the applicant since January 1981. He stated, "[the applicant] and I lived in the same neighborhood for many years. [The applicant] and I also work in the same area for many years. [The applicant] works in a restaurant in the precinct that I have being working as a New York City Police Officer for fifteen years, this is one of the reason why we became friends and keep in contact." [redacted] statements in the letter appear to be contradictory. Specifically, [redacted] stated that one of the reasons he became friends with the applicant was that the applicant worked in the precinct where [redacted] worked as a police officer since approximately 1988. [redacted] also claimed to have known the applicant since January 1981. This inconsistency calls into question whether [redacted] can actually confirm the applicant's residence in the United States during the requisite period.

The applicant also provided an affidavit from [redacted] dated April 25, 2002. It is noted that the notary stamp for this affidavit appears on a different page than [redacted]' signature. This calls into question the authenticity of [redacted] signature. In her affidavit, [redacted] stated that she met the applicant in the United States in 1981. [redacted] referred to specific contacts with the applicant in August 1982, Mother's Day 1983, Thanksgiving 1984, Christmas 1985, 1986, Valentine's Day 1987, and 1988. [redacted] did not specifically confirm that the applicant continuously resided in the United States from prior to January 1, 1982 throughout the requisite period, or for any specific portion of the requisite period. [redacted] did not provide any contact information in her affidavit.

The applicant also submitted a letter from [redacted], pastor at the Church of Our Lady Queen of Martyrs. In this letter, [redacted] confirmed that the applicant had been worshipping at [redacted] church regularly since 1981. This letter is found to be inconsistent with the applicant's statements on Form I-687. Specifically, the only affiliation or association the applicant listed on Form I-687 was St. Matheris from 1992 to present. The fact that the applicant listed what appears to be another church but failed to list the church that he has purportedly been attending regularly since 1981 calls into question whether [redacted] can actually confirm the applicant's residence in the United States for any part of the requisite period. In addition, the letter from [redacted] is found not to conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(v) for attestations by churches, unions, or other organizations as to the applicant's residence. Specifically, the letter does not include the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

At his interview with the immigration officer on November 30, 2005, the applicant stated that he entered the United States on January 12, 1981. When asked whether he traveled outside the United States the applicant indicated only that he traveled to Ecuador for 25 days from October to November 1984. The applicant stated that his wife came to the United States for the first time in 1995. When asked for his places of residence since entering the United States the applicant listed the following addresses: [redacted], New York, New York from 1981 to 1987; and [redacted] from 1987 to 1995. This response is inconsistent with the applicant's statements on Form I-687. Specifically, on Form I-687 the applicant stated that he lived at [redacted] from 1981 until 1985, as opposed to from 1981 to 1987 as he stated in the interview. On Form I-687 the applicant also stated that he lived at [redacted] from 1986 to 1999, as opposed to from 1987 to 1995 as he stated in the interview.

These inconsistencies call into question whether the applicant actually resided in the United States throughout the requisite period.

The director issued a NOID on January 24, 2006 explaining that the affidavits submitted by the applicant failed to overcome the unavailability of primary and secondary evidence. In response to the NOID, the applicant submitted an additional affidavit from [redacted] dated February 15, 2006. In this affidavit, [redacted] confirmed that he met the applicant in May 1981 at the restaurant Floridita and that the applicant continues to work at this restaurant. [redacted] reiterated the contacts with the applicant that he had mentioned in his first affidavit. [redacted] provided multiple telephone numbers and expressed his willingness to be contacted by telephone. The applicant also provided copies of citizenship, police officer, and driver's license documentation for [redacted], as well as corporate entity documentation for Floridita. The applicant included a second affidavit from [redacted]. In this affidavit, [redacted] reiterated her statements from her prior affidavit regarding contacts with the applicant in the United States. [redacted] also provided a contact telephone number. With this affidavit, [redacted] included citizenship and driver's license documentation. Both these affidavits still failed to specifically confirm that the applicant continuously resided in the United States throughout the requisite period. With his response to the NOID, the applicant also included a statement prepared by [redacted] who was identified with the title "Law Office Director." [redacted]s statement reiterates the applicant's eligibility for temporary resident status and restates legal requirements regarding Form I-9 filings.

In denying the application, the director stated that she had received additional evidence from the applicant, and she indicated the information and documentation submitted by the applicant were insufficient to overcome the grounds for denial as stated in the NOID. The director also mistakenly stated that the applicant did not submit any additional documentation with his written statement, in response to the NOID.

On appeal, the applicant submitted a brief that suggests the director violated the APA; failed to provide the applicant with meaningful notice, in violation of the United States Constitution; and violated the PRA. The brief also argues that the hardship that would result to the applicant from not receiving the benefit he seeks is greater than the hardship to the director if the applicant receives the benefit.

The record also includes a Form I-485 application to adjust to permanent resident status submitted by the applicant on June 6, 2002. At part 3B where applicants were asked to list all sons and daughters, the applicant listed a son born in Ecuador on July 11, 1985 and a daughter born in Ecuador on August 2, 1987. Again, this statement regarding the birth of his daughter is inconsistent with the applicant's statements in the interview with an immigration officer, where he indicated he only departed the United States in 1984 and his wife never entered the United States until 1995. At part 3C where applicants were asked to list memberships in or affiliations with organizations and other groups, the applicant listed only St. Matheris church from 1992 to present. Again, this is inconsistent with the letter from [redacted] who indicated the applicant attended the Church of Our Lady Queen of Martyra regularly since 1981. With the Form I-485 the applicant also submitted Form G-325A Biographic Information. Where applicants are asked for their last address outside the United States of more than one year, the applicant indicated he was living at an address in Ecuador from August 1965, the month of his birth, until December 1981. This is inconsistent with the applicant's statement in the interview with

an immigration officer, where the applicant stated he entered the United States in January 1981. The statements on Form G-325A are also inconsistent with the applicant's statements on Form I-687, where he indicated he first began residing in New York in January 1981. On Form G-325A where applicants were asked to list their employment for the last five years, the applicant listed only Coral Donut Shop from August 1985 to May 1998 and Bus Stop Restaurant from May 1998 to the present time. This is inconsistent with the affidavit from [redacted] that indicates the applicant was working at Floridita continuously since 1981. With his Form I-485, the applicant also included documentation of having completed a technical institute course in 1986.

In summary, the applicant has provided only limited contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits and letters that fail to specifically confirm that the applicant continuously resided in the United States throughout the requisite period, contain signatures that are not notarized or that appear on a different page from the notary stamp, are internally inconsistent, do not conform to regulatory requirements, or are inconsistent with the applicant's prior statements. Specifically, [redacted]' first affidavit and both of [redacted] affidavits fail to specifically confirm that the applicant continuously resided in the United States throughout the requisite period. [redacted]' letter appears to be internally inconsistent and is not notarized. [redacted]' second affidavit is inconsistent with the applicant's statements on Form G-325A. [redacted]'s letter fails to conform to regulatory standards and conflicts with the applicant's statements on Form I-687 and Form I-485. In addition, the applicant's statements in his interview with an immigration officer were inconsistent with his statements on Form I-687 and Form G-325A. The applicant's statements on Form I-485 and Form G-325A were also inconsistent with his statements on 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 its amenability to verification. Given the contradictory statements contained in the applicant's I-687 application, Form I-485, Form G-325A, record of his interview with an immigration officer, and supporting affidavits; 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.