U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: APR 30 2008

MSC-05-011-10381

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that though the applicant submitted a rental agreement for the year 1985 and a rental receipt for the month of December 1981 and affidavits in support of his application, these documents did 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 director specifically noted that the affidavits submitted by the applicant did not contain evidence that the affiants were present in the United States during the requisite period. Furthermore, none of the affiants from whom the applicant submitted affidavits stated that they personally knew that the applicant resided continuously in the United States for the duration of the requisite period. Therefore, the director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits additional documents in support of his application. These documents include two letters in support of the applicant, birth certificates and a statement from the applicant.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must 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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 October 11, 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 showed that since his first entry **in the United States he had** only resided at one address in the United States: in Brooklyn, New York where he indicated he lived from November 1996 until the present. It is noted that the applicant did not indicate that he resided in the United States during the requisite period on this form. At part #32 where the applicant was asked to list all of his absences from the United States, he

indicated that he had no absences during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his only employment to be that of a self-employed taxi driver from March 1996 until he submitted his Form I-687. It is noted that the applicant did not indicate that he was employed in the United States during the requisite period.

The record also contains a previously submitted Form I-687 that was received by the Service in October 1990. At part #33 of this application, where the applicant was asked to list all of his addresses since he first entered the Untied States, the applicant indicated that he lived at the following addresses during the requisite period: [redacted] n Astoria, New York from November 1982 until December 1983; 2[redacted] in Astoria, New York from January 1984 until November 1986; and 1[redacted]., in Brooklyn, New York from December 1986 until March 1990. It is noted that the applicant did not indicate that he resided in the United States prior to January 1, 1982 on this application. It is also noted that these addresses of residence are not consistent with those shown on his subsequently submitted Form I-687 filed pursuant to the CSS/Newman Settlement Agreements. At part #35 where the applicant was asked to list his absences from the United States since his first entry, he indicated that he was absent from the United States from December 2, 1987 until January 9, 1988. It is noted that this absence is not shown on the applicant's subsequently filed Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. At part #36 where the applicant was asked to show his employment since he first entered the United States, he indicated that he worked as a messenger, notably spelled "Mesenjer" for the Commission of Motor Vehicles from May 1983 until August 1985; as a messenger, also spelled "Mesenjer" for the People's Brokerage Bureau from September 1985 until October 1987; and as a messenger, also spelled "Mesenjer" for the Linart Agency from December 1987 until January 1988. It is noted that this employment is not consistent with what the applicant showed on his subsequently filed Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. It is noted that the applicant's listed addresses of residence, absences from the United States and places and dates of employment are not listed consistently with what he showed on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements.

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).

Documents in the record that the applicant submitted both with his current and previously filed Forms I-687 in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 include:

- A letter from the People's Brokerage Bureau in Astoria, New York that states that the applicant, whom it states was born on March 10, 1990 and whom it states was "resinding" at [redacted] in Miami Beach, Florida, worked with the company from September 1985 until October 1987 as a "Mesenjer." This letter is dated September 28, 1990, is on company letterhead and was signed by [redacted] the manager of the insurance company. It is noted that the applicant did not show this address or this place of employment on his Form I-687 submitted pursuant to the CSS/Newman Agreements. It is also noted that this document indicates that the applicant was born March 10, 1990, which is after his date of employment shown on this letter. Other documents in the record indicate that his date of birth is actually March 10, 1959. Because this letter is not consistent regarding the applicant's employment shown on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, and because the unusual spelling of the word messenger is consistent with that shown on the applicant's Form I-687 submitted to establish class membership but is not consistent with a commonly seen misspelling, doubt is cast on the credibility of the information contained in this employment letter.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

- An employment letter from the Linart agency in Hicksville, New York that states that the applicant worked for this company as a "Mesenjer" from December 1987 until January 1988. This letter is not consistent regarding the applicant's claimed employment on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. Because this letter is not consistent regarding the applicant's employment shown on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, and because the unusual spelling of the word messenger is consistent with that shown on the applicant's Form I-687 but is not consistent with a commonly seen misspelling doubt is cast on the credibility of the information contained in this employment letter.

- An employment letter from the Commission of Motor Vehicles stating that the applicant worked with them from "[redacted]" 1983 until August 1985. This letter is not consistent regarding the applicant's claimed employment on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements.

- Two envelopes addressed to the applicant that are date stamped on July 12, 1983 and May 21, 1984. Though the addresses to which these envelopes were sent are consistent with those shown on his Form I-687 submitted to establish class membership, they are

not consistent with addresses shown on the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. Though these envelopes are evidence that an individual sent letters to the applicant at addresses in the United States on two occasions, they alone are not sufficient to prove by a preponderance of the evidence that the applicant resided at those addresses continuously for the duration of the requisite period.

- A letter from Long Island City High School stating that the applicant, who was born in 1959, attended that High School from 1983 until 1985, when he graduated. It is noted that the applicant would have been 24 years old in 1983. It is also noted that in the letter's single sentence there are several misspellings and errors. Notably, the word enrolled is spelled, "enroled"; the word graduated is spelled, "grauate" and the title of the high school's principal is not capitalized and the phrase "a full time student for the years of the 1983, 1984, 1985..." appears. It is further noted that the record indicates that the school was contacted and that the principal of that school indicated that this school did not issue the letter to the applicant.

- An affidavit from [redacted] that was notarized on May 18, 2004. This affidavit states that the affiant met the applicant in December 1981 at York College in Jamaica, New York at a Christmas party. Here, the affiant states that she spoke to the applicant for approximately one and a half years and then she "went traveling." Here, though the affiant indicates that she spoke with the applicant from 1981 until sometime in 1983, she does not state that she personally knows that he was residing in the United States at that time. Similarly, she does not indicate that she had regular, ongoing contact with the applicant for the duration of the requisite period. She fails to clarify whether she was in the United States when she "went traveling." She further fails to submit proof that she herself resided in the United States for part of all of the requisite period. It is noted that the applicant did not show an address of residence in the United States until November 1982 on his Form I-687 submitted to establish class membership in 1990 and he did not show that he had an address of residence prior to 1996 on his Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements. Because of this affidavit's significant lack of detail and because it does not indicate that the affiant had regular, ongoing contact with the applicant for the duration of the requisite period, it does not carry any weight in establishing that the applicant resided continuously in the United States for the duration of that time.

- An affidavit from [redacted] that was notarized and signed on August 3, 2005 that states that [redacted] has known the applicant since 1984. Here, the affiant states that the applicant lived in the same area as him for part of the requisite period. However, he fails to indicate an address at which it is personally known to him that the applicant resided. Though the affiant states that he lived near the applicant for part of the requisite period, he has not submitted any evidence proving that he himself resided in the United States for any portion of the requisite period. Further, because this affiant states that he did not meet the applicant until 1984, this affidavit carries no weight in

establishing that the applicant entered the United States on a date before January 1, 1982 or that he resided continuously in the Untied States at any point in time before 1984.

- An affidavit from [redacted] dated February 8, 2005 that is not notarized. This affiant states that he has known the applicant since 1985. He states that the applicant was his neighbor in Astoria at that time. Here, though the affiant submits proof of his identity, he does not submit proof that he himself resided in the United States during the requisite period. The affidavit does not list an address at which the affiant personally knows that the applicant resided during the requisite period. He does not indicate when the applicant began and ended his residence in Astoria. Further, he claims to have known the applicant for only part of the requisite period. Therefore, this affidavit carries no weight in establishing that the applicant resided in the United States at any other time than sometime in 1985.

- A receipt showing that the applicant paid rent for the month of December 1981 to a landlord for the rental of a property located at [redacted] in Astoria, New York. It is noted here that the applicant did not show that he lived at this address in 1981 or at any time before, during or after that date on either of the Forms I-687 that he submitted. Because this document shows that the applicant paid rent for a property at which he has never indicated he resided, doubt is cast on the credibility of this receipt.

- A photocopy of a receipt showing that the applicant paid five hundred fifty-one dollars and twenty-five cents on March 31, 1985 for the rental of an unspecified property. Because the applicant's name is not shown on this receipt and because there is no address associated with it, this receipt cannot clearly be associated with the applicant. Because this receipt cannot clearly be associated with the applicant, no weight can be accorded to this document as proof that the applicant resided in the United States during the requisite period.

- A photocopy of a document showing that the applicant signed a lease for a property located at [redacted] in "LIC," New York from April 1, 1985 until March 31, 1986. It is noted that on the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, he did not indicate that he lived at this address or any other address in the United States in 1985 or 1986. It is further noted that the applicant showed that he resided at [redacted] in Astoria, Queens from January 1984 until November 1986 on his Form I-687 submitted to establish class membership in October 1990. It is also noted that part six of this lease indicates that the lease, which will begin on April 1, 1985 will terminate on March 31, 1985, the day before it commences. It is further noted that the address shown on this lease does not appear on either of the applicant's Forms I-687 as one at which the applicant resided before, during or after the requisite period. Therefore, because of this inconsistency, doubt is cast on the credibility of this lease agreement.

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).

The director denied the application for temporary residence on August 2, 2006. In denying the application, the director stated that she found the affidavits submitted by the applicant were neither credible nor amenable to verification. She went on to say that they were also lacking in probative value. She clarified that credible affidavits are those which include a document identifying the affiant, proof that the affiant was in the United States during the requisite period, as well as a working daytime telephone number at which the affiant can be reached. She stated that the affidavits submitted by the applicant did not meet all of these criteria and that because the affiants did not state that they knew the applicant for the duration of the requisite period they were insufficient to prove that the applicant resided continuously in the United States for the duration of that time. The director went on to say that her office found the rental contract and the rental receipt submitted by the applicant carried very minimal weight because of the applicant's previous submission of fraudulent documents. In saying this, the director specifically mentioned the letter from Long Island High School. The director stated that she felt that these newly submitted documents were highly suspect. The AAO also found that the rental receipt dated March 31, 1985 could not clearly be associated with the applicant and that the lease submitted by the applicant dated March 31, 1985 showed the applicant had a lease for a property that was inconsistent with any address of residence that he indicated that he resided at before, during or after the requisite period. Because the applicant did not submit sufficient credible documents that allowed him to prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period, the director found he was not eligible to adjust status to that of a temporary resident.

On appeal, in support of his application, the applicant submits a statement that he wrote, a copy of a visa issued to him on August 3, 1989 by the United States Consulate in Casablanca, a notarized affidavit from [redacted] a letter from his daughter, [redacted] and birth certificates for both of his children.

- In his statement, dated August 15, 2006, the applicant states that he could only submit a receipt that was not typed because his landlord told him that this was all that he could give the applicant. He also states that he could not provide an original copy of his lease agreement because the landlord died and therefore this was the only copy available. He goes on to say that the document previously submitted from Long Island High School was not fraudulent. He states that when he went to the school, he was informed that officials told him that they did not retain records from 20 yeas ago. He states that this is why the letter was handwritten. It is noted here that the letter from Long Island High School was dated October 23, 1990 and states that the applicant attended that school from 1983 until 1985. Therefore, the records would have been five rather than 20 years old at the time the letter was written. It is further noted that this letter was typed rather than

handwritten. Neither of these explanations would explain why notes in the record indicate that the school stated that this letter was never issued by them to the applicant.

A copy of the United States visa issued to the applicant in 1989. This document does not pertain to the requisite period. The issue in this proceeding is whether the applicant resided continuously in the United States from a date before January 1, 1982 until he attempted to file for legalization during the original filing period, which was from May 5, 1987 until May 5, 1988. Therefore, this document is not relevant evidence in this proceeding.

- An affidavit from [redacted]. This document was notarized on August 16, 2006. This affidavit contains the same testimony as her previous affidavit. Therefore, for the reasons noted previously, this affidavit is not sufficient to establish that the applicant resided continuously in the United States for the duration of the requisite period.

- A letter from that is dated August 15, 2006 and is not notarized. This letter states that the declarant is the applicant's daughter, who was born in Brooklyn, New York on July 12, 1990. Though it is clear that the declarant feels strongly that her father, the applicant, should remain in the United States, because the declarant was born after the requisite period ended, this letter carries no weight in establishing that the applicant resided continuously in the United States during the requisite period.

- Photocopies of the birth certificates for [redacted], born July 12, 1990 and [redacted] born October 6, 2001. Both of these documents pertain to dates subsequent to the requisite period. Therefore, they carry no weight as proof that the applicant resided continuously in the United States during the requisite period.

In summary, for the reasons noted above, the applicant has not provided sufficient evidence to prove by a preponderance of the evidence that he resided in the United States continuously in an unlawful status for the duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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