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

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[redacted]

FILE: [redacted] Office: CHICAGO Date: JAN 11 2008

MSC 06 098 25430

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, Chicago, and that 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, on January 6, 2006. 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 noted that the beneficiary had provided in support of his application a letter from [redacted] indicating that he had applied for a life insurance policy in 1982. The director observed that the company that provided the letter "never existed until December 31, 2002." On the basis of this information, the director determined that the applicant had failed to establish the credibility of his application. 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, counsel for the applicant asserts that the director misread the letter from [redacted] Counsel explains that the person who signed the letter worked for a different insurance company, [redacted], in March 1982 when the applicant applied for insurance. The appeal contains evidence that this company was incorporated in 1983. Counsel asserts that in light of this clarification, the director's decision is contrary to the weight of the other evidence submitted, particularly because the director did not discount any of the remaining evidence. Counsel submits a brief and evidence in support of the appeal.

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 be 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)(1) 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 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 for the duration of the requisite period. Here, for the reasons discussed below, 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 January 6, 2006. 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 indicates that he resided at [redacted] in Chicago, Illinois from November 1981 until June 1987, and at [redacted] in Chicago from July 1987 until 1988. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant showed that he was employed in a shipping/receiving position with Handicraft Imports from November 1981 until March 1987. He also showed that he was self-employed during this period, as a window washer, porter, waiter and busboy.

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:

- A letter dated February 14, 2003 from GreatBank N.A. of Illinois, indicating that according to their records, the applicant has been a customer of the bank "for over 15 years." While this letter suggests that the applicant opened a U.S. bank account in or before 1988, it carries little weight in establishing that he continuously resided in the United States for the duration of the requisite period, particularly as it does not identify the actual date on which he opened an account, nor indicate the extent of the account activity during the requisite period.

- Dental records from [redacted], showing that the applicant visited his office in August 1986, November 1987 and January 1989.

- A form-letter "Affidavit of Witness" from [redacted], currently a resident of Florida, who states that he first met the applicant in Chicago in 1981, that he himself resided in Chicago as a student at that time, and that he knows that the applicant resided on [redacted] from 1981 until 1987. The affidavit is not accompanied by proof of identification or any evidence that [redacted] resided in Illinois for the relevant period; it does not indicate his relationship with the applicant, how he dates his acquaintance with him, or how often and under what circumstances he had contact with him during the requisite period; and it otherwise lacks any details that would lend credibility to an alleged 24-year relationship with the applicant. It is unclear as to what basis [redacted] claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

- An affidavit from [redacted], apparently a Florida resident, who states that he first met the applicant in Chicago in November 1981 "during my visit." He states that the applicant was residing at [redacted] in Chicago at that time, that he left the United States for "couple of months" in summer 1987, and that he is a person of good character. The affidavit is not accompanied by identification nor any evidence that the affiant ever resided in Chicago, Illinois, which is critical, given that he only mentions a "visit" to Chicago. [redacted] does not indicate the nature of his relationship with the applicant, the circumstances under which he met him, or the frequency of his contacts with him during the requisite period. The affiant provides no details that would lend credibility to his claim that he has known the applicant for 23 years and has personal knowledge of the events and circumstances of his residency in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

- An affidavit from [redacted], a resident of Florida, who states that he met the applicant in 1985 when the affiant came to the United States. [redacted] states that he is "aware" that the applicant came to the United States four years before him, that he resided at [redacted] in Chicago, that he left the United States for a "couple of months" in 1987, and that he is a person of good morals. This affidavit suffers from the same deficiencies as those discussed above as it is unaccompanied by documentation identifying the affiant, and there is no evidence that [redacted] resided in Illinois during the requisite period. Like the other affiants, he did not state with any detail how he first met the applicant, what his relationship with the applicant is, or how frequently and under what circumstances he saw him during the requisite period. The affidavit is completely devoid of any details that would lend credibility to the claimed 19-year relationship between [redacted] and the applicant, and provides no basis for concluding that [redacted] actually has direct, personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. As the affiant claims to have met the applicant in 1985, it can be given no weight in establishing his residence prior to that date, and only minimal weight in demonstrating the applicant's presence thereafter.

- An affidavit from [redacted] also a resident of Florida, who states that she has known the applicant since 1985 and that she met him in Chicago, Illinois. This affidavit is otherwise essentially identical to that submitted by [redacted] and is deficient for the same reasons discussed above. Further, it is noted that [redacted] offers no information as to how she dates her first meeting with the applicant.

- An affidavit from [redacted], a resident of Illinois, who states that he first met the applicant in November 1981 at a community center, where the applicant had come with an interest in doing voluntary work for senior citizens. [redacted] provides his own and the applicant's addresses of residence at the time, and states that he personally provided the applicant with transportation to community projects and community seminars. He states that he knows that the applicant traveled outside the United States in summer 1987, and that the applicant is a person of good moral character. The affidavit is not accompanied identification or any proof of [redacted] relationship with the applicant. While he claims to have met the applicant at a community center, he does not specify the name or location of the center. [redacted] does not indicate how he dates his acquaintance with the applicant, how frequently he saw him during the requisite period, or provide details of the events and circumstances of his relationship with the applicant sufficient to lend credibility to the claim that he has in fact known the applicant for 23 years. For these reasons, [redacted] affidavit carries limited weight in establishing the applicant's continuous residence in the United States for the duration of the requisite period.

- A letter from [redacted], which is printed on the letterhead of Handicraft Imports. [redacted] states that the applicant worked at Handicraft Imports from October 19, 1981 until March 12, 1987, performing shipping and receiving duties. Although the statement is on company letterhead, it is not notarized, nor is it dated. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at

the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [redacted] does not include the required information and cannot be verified. Moreover, the applicant testified under oath during his interview with a CIS officer that his first entry to the United States was in November 1981. Therefore, [redacted] statement that the applicant worked for Handicraft Imports as of October 19, 1981 is not credible. It can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- A letter, not notarized, dated November 15, 2005, from [redacted] which is on the letterhead of [redacted], located in Westmont, Illinois. [redacted] states: "I know [the applicant] since March 1982, he came to my office to secure Term Life Policy, but due to insufficient required documents, we regret to offer Life Policy." [redacted] did not indicate the source of the information provided in the letter, i.e., whether it was derived from company records or his own recollection. As such, this statement alone carried little evidentiary weight. Further, as discussed further below, the director, upon searching publicly available company records, found that Harmony Insurance Services was not incorporated until December 2002.

- Photocopies of three envelopes addressed to the applicant at his claimed initial address in the United States, one bearing a 1982 postmark, and two bearing 1985 postmarks. It is noted that the original envelopes are in the record, as they were submitted in a separate proceeding, and they do appear to be legitimate. While these envelopes would appear to establish that the applicant was in the United States some time in 1982 and in 1985, they are insufficient to establish that he in fact entered the United States prior to January 1, 1982 and resided in this country continuously for the duration of the requisite period.

- A cash register receipt for the purchase of a book, dated March 21, 1984. As the receipt cannot be associated with the applicant, this evidence has no probative value.

The applicant was interviewed under oath by a CIS officer on May 10, 2006. The director subsequently denied the application on May 18, 2006. In denying the application, the director concluded that, after reviewing all evidence and information submitted, the applicant failed to establish that he entered the United States before January 1, 1982. The director further stated:

> [Y]ou presented a letter from [redacted], indicating that you came to their office in March 1982, to secure a Term Life Policy. However, Service records reveal that [redacted]. never existed until December 31, 2002.
>
> In view of the above, you have failed to establish the credibility of your application.

On appeal, counsel for the applicant asserts that the director misread the letter from Harmony Insurance. Counsel states:

> The letter, while written on the [redacted] stationary, states that the writer worked for [redacted]. in March 1982 and [the applicant] applied for insurance at the [redacted] offices at that time. In 1983 [the applicant] did not apply for insurance at [redacted] he applied for insurance at [redacted]. Attached as Exhibit J is certification from the Illinois Secretary of State stating that [redacted] was incorporated in the States of Illinois on January 10, 1983.

It is noted that counsel's account of what was stated in the Harmony Insurance Services letter previously submitted for the director's review is inaccurate. The content of this letter was addressed above, and there is no reference to [redacted] previous employment with [redacted] The letter from [redacted] provided on appeal states the following:

> I, [redacted], certified that I was in March 1982 working for [redacted]
>
> [The applicant] came to me and I refer [sic] him to my brother [redacted] regarding Term Life Insurance, but due to lake [sic] of documentation my brother [redacted] and I regret to offer him any policy.

This new letter, which is neither dated nor notarized, is accompanied by evidence that [redacted] also known as [redacted] was incorporated in the State of Illinois on January 10, 1983. It is assumed that this company is one and the same as the company referred to by [redacted] as "[redacted]" as no other explanation has been provided regarding the different names.

While counsel and the applicant have attempted to clarify the deficiency that was specifically addressed by the director, the fact remains that [redacted] stated that the applicant visited his office in March 1982. He does not explain how he was working for [redacted]c. in March 1982 if this company did not exist until January 1983, and his testimony is still not credible. Absent evidence that a company known as "[redacted]" actually existed in March 1982, the new claims submitted on appeal are insufficient to overcome the director's decision. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel further asserts that the application should be approved because the district director's decision "does not discount any of the evidence submitted except the Harmony Insurance letter." This statement is

inaccurate. The director stated that upon review of all documentation and information submitted, the applicant had failed to submit credible evidence that he entered the United States prior to January 1, 1982. The director did not, in fact, deny the application solely on the basis of the suspect credibility of the letter from Harmony Insurance Services.

It is noted that when denying an application, the director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing an applicant why the evidence failed to satisfy his or her burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). Here, the reasons given for the denial of the application are conclusory, with few specific references to the evidence and testimony in the record. The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). Therefore, the director's error is found to be harmless. All evidence submitted in support of the application, and the credibility and sufficiency of each piece of evidence, has been discussed herein. Further, contrary to counsel's assertions, the fact that the director failed to include a detailed analysis of the submitted evidence does not lead to a conclusion that he found the evidence to be credible, relevant and probative. The director stated a legitimate basis for the denial of the application as the applicant has not submitted sufficient relevant, probative and credible evidence of his entry and continuous residence in the United States for the duration of the requisite period. Evidence of the applicant's residence in the United States during the 1981 to 1985 period is particularly lacking.

While counsel correctly states that failure to provide evidence other than affidavits shall not be the sole basis for finding that an applicant failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. Only two affiants, [redacted] and [redacted] actually claim to have been living in Chicago in 1981 and to have met the applicant at that time. However, as discussed, their statements are significantly lacking in detail and do not establish that they actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. None of the affiants provided much information beyond acknowledging that they met the applicant in Chicago in 1981 or 1985. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided only minimal contemporaneous evidence of residence in the United States relating to requisite period, particularly prior to 1986, that can be clearly associated with him. He has submitted attestations from individuals that lack detail and can be given very little weight. Further, the employment letter from Handicraft Imports is not credible as it conflicts with the applicant's own statements regarding his initial date of entry to the United States.

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).

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 the the applicant's reliance upon affidavits 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.