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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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUL 17 2008

MSC-05-180-11540

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.

for 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, in her Notice of Intent to Deny (NOID), the director stated that the applicant failed to provide evidence that he maintained continuous residence and was continuously physically present in the United States for the requisite period and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In her decision, the director stated that the applicant failed to submit additional evidence in support of his application. Therefore, the director determined the applicant did not overcome her reasons for denial as stated in her NOID and she denied the application.

On appeal, the applicant asserts that he did submit additional evidence for consideration in response to the director's NOID and that this evidence was not considered when the director issued her decision. He submits a brief and proof that the evidence he submitted in response to the director's NOID was received timely by the New York District Office.

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 applicant 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 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 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 March 29, 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 showed his address in the United States during the requisite period to be: [redacted] in New York, New York from December 1981 until January 1985; and [redacted] in New York, New York from January 1985 until January 1995. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from the United States once during the requisite period when he went to Canada to look for work in January 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that his first employment in the United States was as a self-employed street vendor on Canal Street in New York from January 1986 until January 1995. It is noted that the applicant was born on January 1, 1968. Therefore, he would have remained a minor until January 1986.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

The applicant submitted the following evidence in support of his claim of having maintained continuous residence in the United States during the requisite period:

> An affidavit from that was notarized on March 21, 2005. The affiant states that he first met the applicant at [redacted] where many Africans lived and gathered. He states that the applicant was a teenager who was living with his parents [redacted] and [redacted] at that time. He states that he kept in touch with the applicant from 1985 to 1995. Though he speaks of the applicant's good moral character, he fails to state the frequency with which he saw the applicant during the requisite period. This affiant cannot personally know that the applicant entered the United States prior to January 1, 1982, as he did not meet the applicant until 1985. Therefore, this affidavit carries no weight as evidence that the applicant entered the United States before January 1, 1982. Because this letter is significantly lacking in detail, it carries very minimal weight as evidence that the applicant resided in the United States from 1985 until the end of the requisite period.

It is not clear from the record whether this affidavit was submitted prior to or subsequent to the date that the director issued her NOID. However, the AAO notes that this document was notarized prior to the issuance of the director's NOID.

The director issued a NOID to the applicant on January 6, 2006. In this NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

The record does not contain additional evidence submitted by the applicant in response to the director's NOID. However, as previously noted, though the affidavit from [redacted] was notarized prior to the date the director issued her NOID, the AAO cannot determine when this affidavit was submitted to CIS. However, for the reasons noted above, regardless of when it was submitted, it does not allow the applicant to meet his burden of proof.

The director denied the application for temporary residence on February 8, 2006. In denying the application, the director stated that the applicant failed to submit additional evidence for consideration in response to her NOID. Therefore, she found he did not overcome her reasons for denial as stated in her NOID and she denied the application.

On appeal, the applicant submits a brief in which he asserts that he submitted additional evidence for consideration in response to the director's NOID. He states that he submitted this evidence timely. He states that he submitted an additional affidavit to the Citizenship and Immigration Services office in New York on January 26, 2006. He further submits a print out of a United States Postal Service Tracking and Confirmation sheet that shows that an item arrived at the New York District Office on January 26, 2006.

However, the applicant does not submit a photocopy of the additional affidavit that he alleges he submitted in response to the director's NOID. He does not provide the name of the affiant from whom he provided this evidence. The AAO reviewed the record and did not find the evidence the applicant alleges he submitted in this case.

The AAO has reviewed the evidence that is in the record and finds that the applicant did not meet his burden of proof. Though he submitted an affidavit from one affiant, this affiant did not state that he knew the applicant for the duration of the requisite period. Therefore, the applicant has failed to submit evidence other than his own testimony as proof that he resided in the United States for the duration of the requisite period. This is not sufficient to allow him to meet his burden of proof.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.