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FILE: [REDACTED]
MSC-05-162-11999

Office: NEW YORK Date: **JUN 20 2008**

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 failed to respond to the Notice of Intent to Deny (NOID) and denied the application for the reasons stated in the NOID. Specifically, the director found that the applicant failed to meet the continuous residence and physical presence requirements for temporary resident status.

On appeal, the applicant stated that he meets the eligibility requirements for temporary resident status. He stated that he provided affidavits to support his claims and he stayed in the United States throughout the requisite period except for a brief and innocent absence. The applicant also provided an additional affidavit and asked that the passage of time be considered in adjudicating the application.

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).

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 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 Supplement to Citizenship and Immigration Services (CIS) on March 11, 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 addresses during the requisite period: [REDACTED] Bronx, New York from October 1981 to March 1986; and [REDACTED] Brooklyn, New York from April 1986 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant did not list any absences from the United States during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated he was a self-employed vendor in the Bronx from December 1981 to March 1986 and in Brooklyn from April 1986 to present.

In an attempt to establish continuous unlawful residence in the United States throughout the requisite period, the applicant initially provided two attestations. The applicant provided an undated declaration from [REDACTED] which states that the declarant has known the applicant since

1982. This declaration fails to state that the applicant resided in the United States during the requisite period. In addition, the declaration fails to provide detail regarding when and where the affiant met the applicant, the dates and locations of the applicant's periods of residence in the United States, the affiant's frequency of contact with the applicant, and whether the applicant was absent from the United States during the requisite period. As a result, the declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an undated declaration from [REDACTED], which states that the declarant has known the applicant since 1986. This declaration fails to state that the applicant resided in the United States during the requisite period. In addition, the declaration fails to provide detail regarding when and where the affiant met the applicant, the dates and locations of the applicant's periods of residence in the United States, the affiant's frequency of contact with the applicant, and whether the applicant was absent from the United States during the requisite period. As a result, the declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant failed to meet the continuous residence and physical presence requirements for temporary resident status.

On appeal, the applicant stated that he meets the eligibility requirements for temporary resident status. He stated that he provided affidavits to support his claims and he stayed in the United States throughout the requisite period except for a brief and innocent absence. The applicant also provided an additional affidavit and asked that the passage of time be considered in adjudicating the application.

The applicant provided an affidavit from [REDACTED]. This affidavit states that the affiant met the applicant during winter 1981 at a party. The applicant was living in Brooklyn at that time, and the affiant was living in the Bronx. The affiant stated that she and the applicant spent time together whenever they could, and the applicant returned home during winter 1986. The affiant stated that she did not know when the applicant returned to the United States, but she believed he returned sometime in the middle of 1987. This affidavit constitutes some evidence that the applicant resided in the United States from the beginning of the requisite period until winter 1986. However, this affidavit also tends to show that the applicant was absent from the United States from December 1986 to the middle of 1987. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The affiant refers to a period of absence from the United States that must have exceeded 45 days, and the applicant has failed to establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed. Therefore, this affidavit tends to show that the applicant failed to reside

continuously in the United States throughout the requisite period. In addition, this affidavit is *inconsistent with the applicant's Form I-687, which fails to indicate that the applicant was absent from the United States during the requisite period.* This inconsistency casts doubt on the affiant's claimed knowledge of the applicant's activities and, as a result, on the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

In summary, the applicant has provided two affidavits that fail to state that the applicant resided in the United States during the requisite period and lack sufficient detail. The applicant also provided an affidavit that is inconsistent with his statements on the Form I-687 and indicates that the applicant was absent from the United States for a period exceeding 45 days. Since the applicant has failed to establish that due to emergent reasons, his return to the United States could not be accomplished within the time period allowed, the affidavit tends to show that the applicant failed to reside continuously in the United States throughout the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the presence of the inconsistencies noted above, 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 statements in the affidavit provided by the applicant indicating that he did not reside continuously in the United States throughout the requisite period, and given his 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 for the requisite period 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.