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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L1

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 10 2008

MSC-05-088-10338

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

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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. The director noted that the applicant failed to respond to the Notice of Intent to Deny (NOID). 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 states that the applicant did respond to the director's NOID timely.

The record shows that the director denied the application on May 3, 2006. The record also shows that the New York District Office received the appeal on May 26, 2006. The director rejected the applicant's appeal on August 29, 2006, noting that the denial was dated March 13, 2006, and therefore, the appeal had been submitted more than 30 days after the decision. A review of the record shows that the director was incorrect in rejecting the applicant's appeal, therefore, the rejection will be withdrawn and the adjudication of the applicant's appeal as it relates to his claim of continuous unlawful residence in the United States since prior to January 1, 1982, shall continue.

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)(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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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.* 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 submitted sufficient credible evidence to meet his or her burden of proof 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 December 27, 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 his first address in the United States to be [redacted]

apartment Jackson Heights, New York, from March of 1981 to December of 1989; and [redacted] Jackson Heights, New York, from January of 1990 to March of 2000.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided copies of his passport and school records. However, these documents are dated subsequent to the requisite period, and are therefore irrelevant to the issue of the applicant's continuous unlawful residence in the country throughout the requisite period.

The applicant has submitted contemporaneous evidence of his residence in the United States. He submitted eight postmarked envelopes addressed to him in the United States and dated 1981, 1982, 1983, 1984, 1985, 1986, 1988. He also submitted a pay statement from Brae Burn Country Club dated May 4, 1986; his bankbook from [redacted] with transaction dates from September of 1987 to December of 1988; and his temporary New York Driver License dated May 27, 1987. Although these documents are contemporaneous evidence of the applicant's unlawful residence in the United States, they are insufficient to demonstrate his continuous residence throughout the requisite period.

The applicant provided boilerplate affidavits from [redacted] and [redacted] in which they stated that they met the applicant at a family party or at the movies, and that they keep in contact with the applicant. The affiants also listed the applicant's address as [redacted] apartment [redacted] Jackson Heights, New York, from March of 1981 to December of 1989. Here, there is no evidence to show that the affiant's information is based upon first hand knowledge. It is further noted that the affiant's fail to specify when they met the applicant and the frequency in which they saw him during the requisite period. They have not provided evidence that they themselves were present in the United States during the requisite period. Because the declarations are significantly lacking in detail, do not appear to be based upon firsthand knowledge, and are not readily amenable to verification, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following attestations:

- A letter from [redacted], in which he stated that the applicant was under medical treatment at his office on December 10, 1981.
- A letter from [redacted] in which he stated that the applicant was seen at his office on December 15, 1982.
- A letter from High School Tutoring in which it was stated that the applicant enrolled at the school in September of 1983.

Although the applicant has submitted a number of attestations in support of his application, they are insufficient to demonstrate his residence in the United States throughout the requisite period. Here, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although the declarants attested to the applicant's residence in the United States prior to January 1, 1982, they have failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate his claim of residence in the United States. 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. The affidavits are significantly lacking in detail, and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted the following employment letters:

A letter from the manager of [redacted] in which he stated that the applicant was employed by the company from March of 1981 to December of 1983 as a construction worker.

- A letter from [redacted] in which it is stated that the applicant was employed by the company as a general helper from January of 1984 to February of 1986.

The letters do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the address(es) where the applicant resided throughout the claimed employment periods, nor do they indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period, to corroborate the assertions made by the declarants.

The applicant submitted an employment letter dated September 28, 1990, from the District Manager Food of Canteen Corporation in which he stated that the company employed "Mr. [redacted]" from March of 1986 to the date of the letter. The applicant indicated on his Form I-687, dated January 25, 1994, that he used the assumed name [redacted] Although the district manager acknowledges the employment of [redacted]" since March of 1986, he fails to specify that that the applicant used the assumed name during his employment with the company. 8 C.F.R. § 245a.2(d)(2)(i) & (ii). Therefore, the letter cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted a letter from [redacted] of Free Gospel Assembly of God, dated November 10, 1990, in which he stated that the applicant has been a member of the church since 1986, that he is regular in his church attendance, and that he has been with the church since

coming from Peru. This letter is inconsistent with the information provided by the applicant in his Form I-687 application, where he when asked in part #31 to list all of his affiliations or associations in the United States he listed Free Gospel Assembly of God from June of 1981 to June of 1987. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Lastly, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during his membership, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit does not conform to regulatory standards, conflicts with other evidence in the record, and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit dated October 2, 1990 from [redacted] in which she stated that she rented a room to the applicant at [redacted] Jackson Heights, New York, from March of 1981 to December of 1989. [redacted] stated in her affidavit submitted November 2, 1990, that she rented a room to the applicant at [redacted] Jackson Heights, New York from January of 1989 to November of 1990. This information is inconsistent with the information provided by the applicant on his Form I-687, where he lists his address to be [redacted] Jackson Heights, New York from January of 1990 to March of 2000. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Because the affidavits lack detail and because they conflict with other evidence in the record, very minimal weight can be afforded to them in establishing that the applicant resided in the United States throughout the requisite period.

In denying the application the director noted that the applicant failed to respond to the NOID dated March 13, 2006. However, a review of the record of proceedings shows that the applicant responded to the NOID on April 18, 2006, therefore, that portion of the director's denial will be withdrawn.

The director based his decision on the reasons for denial contained in the NOID. The director stated in the NOID that the affidavits submitted by the applicant were not credible, in that there was no proof that the declarants had direct personal knowledge of the events and circumstances

surrounding the applicant's residency. The director also noted that the applicant's sister had submitted conflicting attestations.

On appeal, the applicant attempts states that he responded to the NOID in a timely fashion and submitted as evidence the following attestations:

An affidavit from [redacted] in which she stated that she rented a room to the applicant, her brother, at [redacted] Jackson Heights, New York, from March of 1981 to December of 1989, and that the applicant rented a room at [redacted] Jackson Heights, New York, from January of 1989 to November of 1990. This information is inconsistent with the information provided by the applicant on his Form I-687 submitted January 25, 1994, where he lists his address as [redacted], apartment [redacted], Jackson Heights, New York, from January of 1981 to October of 1989, and as [redacted] Jackson Heights, New York, from October 1989 to January of 1994. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 dated January 25, 1994, doubt is cast on assertions made in the affidavit. The record contains a copy of the affiant's United States passport and installment loan statement dated 1989.

- An affidavit from [redacted] in which he stated that he is a legal resident of the United States, that he met the applicant in 1981, and that he and the applicant are friends and visit each other often. Although the affiant states that he has known the applicant since before 1982, he fails to specify when they met, under what circumstances they met, and how long they have maintained an acquaintance. The affiant does not specify the frequency with which he saw the applicant during the requisite period. The applicant has not provided evidence that he himself was present in the United States during the requisite period. Because this affidavit is significantly lacking in detail, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period. The record contains a copy of the affiant's United States passport.

- An affidavit from [redacted] in which he stated that he came to the United States in 1981, and that he met the applicant in 1981 and has since communicated with him often. Although the affiant states that he has known the applicant since before 1982, he fails to specify the circumstances under which they met or how long they have maintained an acquaintance. The affiant does not specify the frequency with which he saw the applicant during the requisite period. The applicant has not provided evidence that he himself was present in the United States during the requisite period. Because this affidavit is significantly lacking in detail, very minimal weight can be afforded to it in establishing that the applicant

resided in the United States during the requisite period. The record contains a copy of the affiant's United States passport.

Here, the applicant has submitted attestations from three people on appeal that are insufficient to corroborate the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. In addition, the attestation by [redacted] is inconsistent with the information provided by the applicant on his Form I-687 submitted January 25, 1994. It is further noted that the applicant has failed to adequately address the issues raised by the director in the NOID.

The absence of sufficiently detailed documentation to support or 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 applicant's contradictory statements on his I-687 application and 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.