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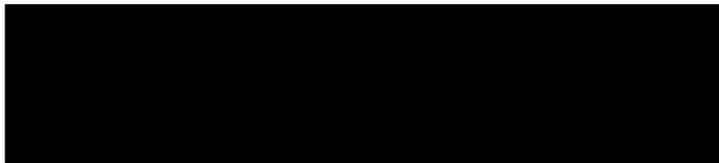
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] MSC-04-307-11056

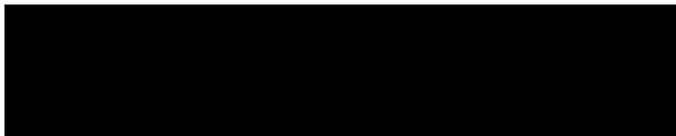
Office: NEW YORK

Date: **MAR 19 2008**

IN RE: Applicant: [Redacted]

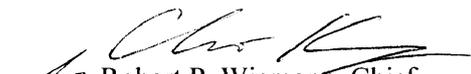
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 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 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 asserts that the applicant is addressing the director's issues raised in his denial by submitting photographs and a list of affiant's names and telephone numbers as evidence.

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.* 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 Supplement to Citizenship and Immigration Services (CIS) on August 2, 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] Los Angeles, California, from May of 1981 to April of 1983; and he listed his address to be [REDACTED] Staten Island, New York, from August of 1984 to March of 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided copies of his social security statement, apartment lease agreement, travel documents, and personal income tax returns. However, the documents are dated from 1984 to 1988 and therefore, do not establish the applicant's continuous unlawful residence since before January 1, 1982.

The applicant also submitted an affidavit from [REDACTED] in which he stated that he has known the applicant to reside at [REDACTED], Los Angeles, California, from May

of 1981 to June of 1984. The affiant further stated that his acquaintance was due to the applicant's employment with the affiant's dentist. This statement is inconsistent with the applicant's statement made in his Form I-687 application, part #30 where he indicated that he resided at [REDACTED] Los Angeles, California, from May of 1981 to April of 1983; and his address to be [REDACTED], Staten Island, New York, from August of 1984 to March of 1990. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. 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, 591-92 (BIA 1988). It is also noted that the affiant has also failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to the applicant's residence in this country, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982 and throughout the requisite period. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because the affidavit is significantly lacking in detail and conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) requesting that the applicant submit additional evidence after determining that the tax records and other documents submitted were dated no earlier than 1984, and that the affiant [REDACTED] lacks specific knowledge of the applicant's residence in the United States.

In response to the director's NOID, the applicant submitted the following attestations:

An affidavit from [REDACTED] in which he stated that he has known the applicant to reside at [REDACTED] Los Angeles, California, from May of 1981 to June of 1984. The affiant further stated that he is the applicant's brother-in-law and that the applicant has sent money to his wife through the affiant. This statement is inconsistent with the applicant's statement made in his Form I-687 application, part #30 where he indicated that he resided at [REDACTED] Los Angeles, California, from May of 1981 to April of 1983; and that he resided at [REDACTED], Staten Island, New York, from August of 1984 to March of 1990. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. It is also noted that the affiant has failed to specify the frequency with which he saw the applicant during the requisite period. Though not required

to do so, the affiant has not included proof of his identity with this affidavit. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to the applicant's residence in this country, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982 and throughout the requisite period. Because the affidavit is significantly lacking in detail and conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he is the applicant's brother-in-law and that to the best of his knowledge, the applicant resided at [REDACTED] Los Angeles, California, from May of 1981 to June of 1984. He also stated that he and the applicant communicated regularly with one another while in Los Angeles, California. The affiant also stated that the applicant and his family stayed with him at [REDACTED], Staten Island, New York, from July of 1984 to July of 1985. These statements are inconsistent with the applicant's statements made in his Form I-687 application, part #30 where he indicated that he resided at [REDACTED], Los Angeles, California, from May of 1981 to April of 1983; and that he resided at [REDACTED] Staten Island, New York, from August of 1984 to March of 1990. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED], residing at Saint Mary of the Assumption Rectory in Staten Island, New York, in which he stated that he has personally known the applicant since 1984, and that the applicant is a person of good moral character. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where he was asked to list all of his affiliations and associations in the United States and he listed no affiliation with any church. It is further noted that the affiant has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to the applicant's residence in this country, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because the attestation lacks detail and is in conflict with information contained in the applicant's Form I-687 application, it can be afforded only minimal weight in establishing that the applicant's claim of continuous unlawful residence in the United States.

In denying the application the director noted that the affidavits submitted by the applicant were not credible or amenable to verification, and that the applicant had failed to meet his burden of proof.

On appeal, counsel asserts that the applicant is addressing the director's issues raised in his denial by submitting photographs and a list of affiant's names and telephone numbers as evidence.

Although the applicant has provided some contemporaneous evidence of his presence in the United States from 1984 to 1988, he has failed to submit documentation to support his contention of continuous unlawful residency since before January 1, 1982, and throughout the requisite period. The applicant has submitted attestations that are not credible in that they are inconsistent with the information he provided on his Form I-687 application. Furthermore, the attestations lack specificity and can only be afforded very minimal weight in establishing that the applicant resided in the United States during the requisite period. There is no evidence in the record to corroborate the applicant's claims concerning the identities of the persons appearing in the photographs or to confirm that the dates handwritten on the back of the photographs are accurate.

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 inconsistency between the affidavits and the applicant's statements on his applications 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.