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

PUBLIC COPY

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FILE:

[REDACTED] MSC-06-081-13162

Office: NEW YORK

Date: **MAY 02 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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R.P. Wiemann".

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, the applicant furnishes additional corroborating evidence. The applicant also addresses the deficiencies cited in the director's denial notice.

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 December 20, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Silver Spring, Maryland from October 1981 until November 1999. Similarly, at part #33, he showed his first employment in the United States in the occupation of “odd jobs” in Silver Spring, Maryland from October 1981 until November 1999.

The applicant failed to submit with his application any documentation to corroborate his residence in the United States during the requisite period. On January 31, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant failed to provide documentation establishing his eligibility for temporary resident status. The director afforded the applicant 30 days to provide additional evidence to overcome the basis for the NOID.

In response to the NOID, the applicant submitted three identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED]. The affidavits provide the following information:

- The affidavit from [REDACTED] attests to his personal knowledge of the applicant's residence in Silver Spring, Maryland from October 1981 until November 1999. The affidavit provides that [REDACTED] and the applicant resided together at [REDACTED]'s home in Silver Spring from October 1981 until November 1999. This affidavit contains several apparent deficiencies. First, this affidavit fails to provide relevant information on [REDACTED] housing arrangement with the applicant during the requisite period. Relevant information would include whether the applicant and [REDACTED] had a rental agreement and the details of such an agreement. Relevant information would also include whether the applicant paid [REDACTED] rent and contributed to the utility bills. In addition, this affidavit fails to explain the circumstances of [REDACTED]'s first acquaintance with the applicant. Finally, this affidavit fails to list [REDACTED]'s address in Silver Spring. Given these deficiencies, this affidavit is of minimal value as probative evidence of the applicant's continuous residence in the United States since October 1981.
- The affidavit from [REDACTED] attests to his personal knowledge of the applicant's residence in Silver Spring, Maryland from October 1981 until November 1999. The affidavit provides that [REDACTED] met the applicant at a common friend's home in October 1981 during a party. This affidavit is also deficient because it lacks significant detail. The affidavit fails to provide any relevant information on [REDACTED]'s relationship with the applicant. Relevant information would include details on the type and frequency of contact he had with the applicant in the United States during the requisite period. This information is necessary to corroborate the applicant's residence in the United States during the requisite period. Given these deficiencies, this affidavit is of minimal probative value as evidence of the applicant's continuous residence in the United States since October 1981.
- The affidavit from [REDACTED] attests to her personal knowledge of the applicant's residence in Silver Spring, Maryland from September 1985 until November 1999. The affidavit provides that [REDACTED]'s husband has a friendship with the applicant. The affidavit indicates that [REDACTED] met the applicant after she entered the United States in September 1985. This affidavit is similarly deficient because it lacks significant detail. The affidavit fails to provide any relevant information on [REDACTED]'s relationship with the applicant. Relevant information would include details on the type and frequency of contact she had with the applicant in the United States during the requisite period. This information is necessary to corroborate the applicant's residence in the United States during the requisite period. Given these deficiencies, this affidavit is of minimal probative value as evidence of the applicant's continuous residence in the United States since September 1985.

On July 3, 2006, the director, New York, issued a second NOID to the applicant. The director's NOID provides that the affidavits he submitted are not amenable to verification. The director

afforded the applicant 30 days to submit additional evidence to overcome the basis for the NOI. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided 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. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant responded to the NOI with copies of nine photographs of a man standing at unidentified locations on unidentified date(s). These photographs are not probative evidence of the applicant’s residence in the United States during the requisite period. The applicant has failed to provide any concrete information regarding these photos. There is no indication that the person featured in the photos is the applicant. There is also no information on the location and date of these photos. Therefore, these photos do not have any probative value as evidence of the applicant’s residence in the United States during the requisite period.

Additionally, the applicant submitted a fill-in-the-blank affidavit from [REDACTED] attesting to his personal knowledge of the applicant’s residence in Silver Spring, Maryland from October 1981 until November 1999. The affidavit provides that [REDACTED] was friends with the applicant’s parents in Paraguay and knows that the applicant came to the United States in 1981. The affidavit provides that [REDACTED] came to the United States in 1987 and has been in touch with the applicant over the telephone or through occasional visits. This affidavit fails to corroborate the applicant’s residence in the United States during the requisite period. At issue is the applicant’s residence in the United States since prior to January 1, 1982 until the date he 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/Newman Settlement Agreements. This affidavit states that [REDACTED] first resided in the United States in 1987. Notably, the affidavit does not state whether [REDACTED] was in contact with the applicant prior to his entry into the United States. Therefore, there is no indication that

[REDACTED] has direct personal knowledge of the applicant’s continuous residence in the United States since October 1981. Given this deficiency, this affidavit does not have any probative value as evidence of the applicant’s continuous residence in the United States since October 1981.

Lastly, the applicant submitted copies of the affiants’ identification documents including the biographical pages from the United States passports of [REDACTED] and [REDACTED] and the Maryland driver’s licenses of [REDACTED] and [REDACTED]. The applicant resubmitted copies of each of their affidavits with their phone numbers highlighted. On the affidavit from [REDACTED], the applicant attached a photograph of a van

with the logo, [REDACTED] Janitor Contraor Services, Inc. The submission of these documents makes the affidavits amenable to verification, thereby addressing the basis for the director's NOI.

The director denied the application on August 8, 2006. In denying the application, the director noted that the affiants' did not answer their phones or their phone lines blocked calls from private callers. The director also noted that the affidavits are notarized by an individual who is not a registered Notary Public in the State of New York. The director found that the photographs are not explained, verifiable by date, location or identity of the persons. The director determined that the applicant had not provided any credible evidence to show his residence in the United States during the requisite period and denied the application.

On appeal, the applicant asserts that he contacted the affiants and asked them to unblock their phones. The applicant resubmits the affidavits and identity documents of the affiants. The applicant also resubmits the same photographs with an explanation of the persons featured in the photographs, their locations and dates. The applicant furnishes a copy of a newspaper article, dated January 1, 1967, regarding one of his affiants, [REDACTED]. Lastly, the applicant provides the license number for the notary public he used.

The applicant submitted a news article from *The Washington Post*, dated January 1, 1967. This article describes how [REDACTED] came to the United States in 1967. While this document is evidence of [REDACTED]'s presence in the United States in 1967, it does not corroborate his relationship with the applicant during the requisite period. Therefore, this article does little to further establish [REDACTED]'s personal knowledge of the applicant's continuous residence in the United States during the requisite period.

The applicant resubmitted the aforementioned photographs and identified on the backside of the photographs the persons featured, their locations, and the years the pictures were taken. The applicant noted that ten of the photographs were taken in 1981 and one photograph was taken in 1982. The reliability of the date of these photographs is based on the applicant's testimony alone. There is no evidence that the photographs were dated stamped upon the date they were taken or developed. For the applicant to meet his burden of proof, he must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Therefore, these photographs are of minimal probative value as evidence of the applicant's continuous residence in the United States since prior to January 1, 1982.

In this case, the absence of 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.