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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-153-12538

Office: NEW YORK

Date: **OCT 10 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to read "Robert 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 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 denied the application, finding that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. Specifically, the director found that the affidavits submitted by the applicant were neither credible nor amenable to verification. The director also noted that attempts to contact one affiant, [REDACTED], had been unsuccessful. Finally, the director noted that the applicant had failed to provide "any tangible evidence or credible documentation" that would establish his residence in the United States during the requisite period.

On appeal the applicant states that he has met the requirements for temporary resident status. The applicant also notes that he did not submit an affidavit from "[REDACTED]" as mentioned in the final decision.

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. 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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 2, 2005. The applicant submitted the following affidavits and written statements in support of his application¹:

- An affidavit from [REDACTED] dated November 4, 2005. The affiant states that he has known the applicant since 1981. However, the affiant does not explain how he came to meet the applicant or how he dates his initial acquaintance with the applicant. Further, the affiant fails to provide details such as the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavits from [REDACTED] and [REDACTED], both dated February 14, 2006, and an affidavit from [REDACTED], which is dated February 2, 2006. These affidavits are all in the same fill-in-the-blank format. Each affiant states that they met the applicant in 1981 at Taj Restaurant. None of the affiants explain how they came to meet the applicant or how they

¹ In her decision, the director indicated that the applicant had submitted an affidavit from [REDACTED].” The applicant stated that he did not submit an affidavit from a [REDACTED], and the record contains no such affidavit. Therefore, the portion of the director’s decision relating to the affidavit from [REDACTED] will be withdrawn.

date their initial acquaintance with the applicant. Further, none of the affiants provide any detail regarding the nature and frequency of their contact with the applicant during the requisite period. Lacking such probative details, these affidavits will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two affidavits from [REDACTED], one dated September 22, 1992 and the other dated January 24, 2005. In the 1992 affidavit, the affiant states that he has personal knowledge of the applicant's residence in the United States since July 1981. The affiant further states that the applicant is his employee and that he and the applicant reside in the same building. In the 2005 affidavit, the affiant states that the applicant worked with him on a part-time basis from 1981 until 1993, and that he and the applicant lived at the same address. Although the dates of residence and employment are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated February 15, 2005. The affiant states that the applicant arrived in the United States in July 1981 and that the applicant lived with him at [REDACTED] in Brooklyn, New York from the time of his arrival in the United States until December of 1993. The affiant also states that he was present with the applicant when the applicant attempted to file an application for temporary resident status in February of 1988. The affidavit lacks probative details such how the affiant came to meet the applicant and how the affiant dates his initial acquaintance with the applicant. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated February 14, 2005. The affiant states that he first met the applicant in the United States in December of 1981 and claims to have knowledge that the applicant has been in the United States since that time. The affiant also claims to have knowledge that the applicant traveled outside the United States from July 1987 to August 1987. The affiant does not provide probative details such as how he came to meet the applicant, how he dates his initial acquaintance with the applicant, or the nature and frequency of the affiant's contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated February 5, 2005. The affiant states that he first met the applicant in the United States in March of 1982. The affiant claims to have knowledge that the applicant has been in the United States since July 1981, however, the affiant does not explain the basis of this knowledge. This affidavit lacks probative details such how the affiant came to meet the applicant, how the affiant dates his initial acquaintance with the applicant, or the nature and frequency of the affiant's contact with the applicant

during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated February 8, 2005. The affiant states that he first met the applicant in the United States in March of 1984. The affiant claims to have knowledge that the applicant has been in the United States since July 1981, however, the affiant does not explain the basis of this knowledge. This affidavit lacks probative details such how the affiant came to meet the applicant, how the affiant dates his initial acquaintance with the applicant, or the nature and frequency of the affiant's contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has also submitted declarations from the following individuals: [REDACTED]

[REDACTED]. None of these declarants were in the United States during the requisite period and none claim to have personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, these declarations will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted declarations from his immediate family members: his father, [REDACTED]; his mother, [REDACTED]; his brother, [REDACTED]; and his sisters [REDACTED] and [REDACTED]. None of these declarants claim to have been in the United States during the requisite period and none provide details demonstrating personal knowledge of the applicant's residence in the United States. Given these deficiencies, these declarations will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted the following letters in support of his application:

- Two letters from the Islamic Council of America, Inc., one dated October 10, 1987 and the other dated January 18, 2005. The letter from 1987 is signed by [REDACTED] General Secretary, and states that the applicant "comes to our religious Mosque at 11th St. Manhattan, Madina Masjid every Friday." The 2005 letter is signed by [REDACTED] and states that the applicant has been a regular participant in weekly prayer services since 1983. These letters are deficient in that they do not comply with the regulation for attestations by churches and other organizations. 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the letters do not establish how the author of each letter knows the applicant and do not establish the origin of the information being attested to. Given these deficiencies, these letters have little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] President of the Beanibazar Social & Cultural Society (USA), Inc. The letter, which is dated February 9, 2005, states that the applicant has been

volunteering with the organization since 1987. The letter is deficient in that it does not comply with the regulation for attestations by churches and other organizations. 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the letter does not establish how the author of the letter knows the applicant and does not establish the origin of the information being attested to. Given these deficiencies, this letter has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

A letter from the president of ██████████ Construction dated June 11, 1991. The letter states that the applicant worked for ██████████ Construction on a part-time basis from February 1988 until August 1990. The applicant did not list this employment on his Form I-687 application. Further, the letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this letter will be given only minimal weight as evidence of the applicant's residence during the requisite period.

- A letter from ██████████ on the letterhead of ██████████ General Contractor. The letter, dated September 28, 2004, states that the applicant worked with ██████████ General Contractor from 1985 to 1993. This is consistent with the information provided by the applicant on his Form I-687 application. However, the letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this letter will be given only minimal weight as evidence of the applicant's residence during the requisite period.

The applicant also submitted the following documents in support of his application:

- A photocopy of a retail receipt from ██████████. The receipt bears the applicant's name and address. The date at the top of the receipt is illegible. However, the following is typed at the bottom of the receipt "Note: Date is 08/10/1982." This note at the bottom of the receipt is in a different font and appears darker than the other text on the receipt. Thus it is not clear that this date was on the original receipt or was typed on later. Because the date of this receipt cannot be verified, it will be given only minimal weight as evidence of the applicant's residence during the requisite period.
- Photocopies of two envelopes, both of which are addressed to the applicant. One bears a postmark dated August 21, 1981 and the other bears a postmark dated October 24, 1982. Although these documents provide some evidence of the applicant's presence in the United States on or around the dates of the postmarks, they are insufficient to establish his residence in the United States.

- A photocopy of a donation request letter and donation card for St. Jude Children's Research Hospital. Attached to the donation card is a receipt on which the applicant's name is handwritten. The date, October 22, 1981, is also handwritten on the receipt. There is nothing to conclusively establish that this document is, in fact, from 1981. Therefore, this document will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. 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 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. 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.