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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

L1

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

MSC 06 097 14403

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.

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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, the applicant reiterated his claim of continuous residence during the requisite period and provided additional 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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the Form I-687 application the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that, from November 1980 to June 1982 he lived at [redacted] in Tarrytown, New York; from July 1982 to October 1984, he lived at [redacted] Tarrytown, New York; from November 1984 to October 1986 he lived at [redacted] Ossining, New York; and from November 1986 to December 1989 he lived at [redacted] in Ossining, New York.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked (1) from January 1981 to October 1981 cleaning for Caldor, at "[redacted]," in Monhegan Lake, New York; (2) from April 1982 to November 1982 cleaning for [redacted] Construction, at [redacted] in Putnam Valley, New York; (3) from February 1983 to September 1983 cleaning for Multicinemas at "Mall Jefferson Valle N.Y. in Yorktown Heights, New York; (4) from October 1983 to August 1985 cleaning for [redacted] at "[redacted]," IN Monhegan Lake, New York; (5) from October 1985 to January 1986 as a laborer at Brookfield Auto Wrecker Inc. at [redacted], in Elmsford, New York; (6) from January 1986 to March 1986 as a laborer at Factoria de Libros, at [redacted] in Pleasantville, New York; (7) from April 1986 to November 1986 as a laborer for Landscaping Inc. at [redacted] in

Chappacua, New York, and (8) from October 1987 to December 1988 as a laborer for Landscaping Inc. at in Chappacua, New York.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he went to Ecuador from August 1981 to September 1981, and from December 1986 to January 1987.

The pertinent evidence in the record is described below.

- The record contains a 1985 Form W-2 Wage and Tax Statement that Brookfield Auto Wreckers, of Elmsford, New York issued to the applicant. That W-2 form shows that the applicant earned $4,543 from that company during that year.

- The record contains an affidavit, dated December 21, 2005, from of Croton on Hudson, New York. The affiant stated that she has known the applicant for several years. She further stated that she knows that the applicant entered the United States during January 1981, and that he traveled to Ecuador from November 1985 to January 1986. The affiant stated that her knowledge of those events is based upon "information and belief," without otherwise characterizing the basis for her asserted knowledge.

- The record contains an almost identical affidavit, dated March 10, 2006, from [redacted] In it, reiterated that she knows that the applicant initially entered the United States during January 1981.

- The record contains an affidavit, dated March 15, 2006, from [redacted], of Buchanan, New York, who stated that he met the applicant in the mid to late 1980's. He further stated that "upon information and belief, I know [the applicant] came to this country in January of 1981."

This office notes that [redacted] and are attesting to events that occurred prior to their meeting the applicant, and of which they cannot have, and do not claim, first hand knowledge. Whatever other basis they may have for their asserted knowledge of the applicant's whereabouts prior to meeting him is unspecified. The affidavits of [redacted] and [redacted] will be accorded no evidentiary weight.

- The record contains an affidavit from [redacted] of Peekskill, New York. That affidavit is dated December 15, 2005, but notarized on December 22, 2005. The affiant states that he is a childhood friend of the applicant, and thereby knows that the applicant entered the United States through Mexico during 1981 and 1986. The affiant did not further characterize the basis for his asserted knowledge. Whether he personally witnessed the events to which he attests, whether he was told of them contemporaneously, or whether he was told of them more recently is unknown to this office. The affidavit of will be accorded very little evidentiary weight.

- The record contains an affidavit from [redacted] of Cortland Manor, New York. Although he has the same family name as the applicant, [redacted] did not indicate that he has a familial relationship with the applicant and stated that he has only known the applicant since 1981 when he met him at Caldor, where the applicant was then employed. That affidavit was dated December 20, 2005, but notarized on December 21, 2005. In the affidavit, [redacted] stated:

  > Upon information and belief I know that [the applicant] came to this country in January of 1981 and has remained here ever since, except for a brief trip to Ecuador during the end of the year 1985.

- The record contains an almost identical affidavit from [redacted], also dated December 20, 2005, but notarized on March 15, 2006. Mr. [redacted] reiterated that he knows that the applicant initially entered the United States during January 1981.

- The record contains an affidavit, dated June 30, 2009, also from [redacted] of Cortland, New York. This office notes that, as of this writing, June 30, 2009 has not yet transpired. In that affidavit [redacted] stated that the applicant is his brother, and he has therefore "been fully aware of [the applicant's] whereabouts since he left [Equador] in 1981." He further certified under oath that the applicant entered the United States during 1981 and has continuously resided in the United States with the exception of short trips abroad.

- The record contains an affidavit, dated June 30, 2006, from of Elmsford, New York. Mr. indicated that he worked with the applicant at County Landscaping from 1986 to 1988, and knows that the applicant has been in the United States since 1981.

- The record contains a letter, dated April 14, 2006, from [redacted], pastor of the Nativity of Our Blessed Lady church in Bronx, New York. That letter states,

  > [The applicant] came . . . to the USA, on the First day of January 1981. As a catholic [sic] he started to attend the religious services on Sundays, at St. Theresa of Avila church, North Tarrytown, (today Sleepy Hollow, NY.)

  The declarant did not state the basis for his statement that the applicant entered the United States on January 1, 1981.

The applicant claimed to have lived in Tarrytown, New York since November of 1980, and not to have entered the United States, initially or otherwise, during January of 1981. The information in the applicant's affidavits and the letter from the pastor of the Bronx church contradicts the information the applicant provided on the Form I-687 application.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to

explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

That the information in the letter from [redacted] and in the affidavits of [redacted], and conflicts with the information the applicant provided on the Form I-687 impeaches not only the credibility of those affidavits, but of all of the applicant's evidence and his assertions as well.

- The record also contains a letter, dated April 23, 2006, from the senior pastor of the Rock of Salvation Church in Sleepy Hollow, New York. The pastor states that the applicant attended that church from 1981 to 1992.

- The record contains a Form 1-213 Record of a Deportable Alien. That document indicates that the applicant departed Ecuador on August 14, 1985 and traveled by air to Mexico. It further indicates that the applicant entered the United States without inspection on August 16, 1985 at approximately 10 pm, one mile East of the port of Entry at San Ysidro, California. When arrested, under the name the applicant stated that he was *en route* to Los Angeles, California to seek employment.

  This office notes that the applicant claims to have lived in New York at that time and not to have left the United States from September 1981 to December 1996. The credibility of the applicant's assertions and the evidentiary value to be accorded to his evidence is further diminished.

- The record contains a letter, dated March 13, 2006, from vice president of Brookfield Auto Wreckers, Inc. of Elmsford, New York. Mr. stated that the applicant worked for that company from September 4, 1985 to January 25, 1986, and from April 29, 1986 to May 6, 1986.

  That employment verification letter does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i). Although it will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L), it will be accorded less evidentiary weight than it would have been had it complied with the requirements of the governing regulation. Further, this office notes that the applicant did not claim, in the ostensibly exhaustive history of his employment in the United States that he included in his Form I-687 application, to have worked for Brookfield Auto Wreckers from April 29, 1986 to May 6, 1986.

- The record contains an affidavit, dated April 16, 2006, from [redacted] of Cold Spring, New York. Dr. [redacted] stated that the applicant shared his apartment in Tarrytown, New York from January 1, 1981 to March 1981. This office notes that although [redacted] shares the applicant's family name, he did not reveal a familial relationship with the applicant.

- The record shows that the applicant was arrested, on June 17, 1990, in Ossining, New York, under the name [redacted], for a violation of New York Vehicle and Traffic Law 1192-2, driving while intoxicated. That offense is identified as Agency Case [redacted]

- The record shows that the applicant was arrested on April 15, 1995, in Ossining, New York, under the name [redacted], for driving while intoxicated. On June 8, 1995, the applicant was convicted, pursuant to his plea of guilty, of that offense, which is a misdemeanor. The applicant was fined $600 and placed on three years probation. That offense is also identified as Agency Case and is believed to be identical to the similar case above.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the Form I-687 application the applicant provided the December 21, 2005 affidavit of [redacted], the December 15, 2005/December 22, 2005 affidavit of Jaime Loja, and the December 20, 2005/December 21, 2005 affidavit of [redacted]. The applicant subsequently provided the December 20, 2005/March 15, 2006 affidavit from [redacted] the March 10, 2006 affidavit **of** [redacted], the March 15, 2006 letter from [redacted] and the March 13, 2006 **letter from Brookfield** Auto Wreckers.

In a Notice of Intent to Deny (NOID), dated April 6, 2006, the director stated that the applicant failed to submit evidence sufficient to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the April 14, 2006 letter from the Bronx, New York church, the April 23, 2006 letter from the Sleepy Hollow, New York church, and the April 16, 2006 affidavit of [redacted]., all of which are described above.

In the Notice of Decision, dated June 6, 2006, the director denied the application based on the applicant's failure to demonstrate that he resided continuously in the United States during the requisite period.

On appeal, the applicant submitted the affidavit of [redacted] dated June 30, 2009 and the June 30, 2006 affidavit of [redacted]

The applicant also provided his own notarized employment history his appeal. That employment history is largely consistent with the history provided on the Form I-687, but with some exceptions. On the Form I-687, for instance, the applicant stated that he began working for Caldor of Monhegan Lake, New York during January 1981. In the history provided on appeal, the applicant stated that he started working for Caldor during July 1981. The applicant provided no explanation of that discrepancy.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification.

The discrepancies between the applicant's claim of residence and the evidence he provided to support it have so undermined the credibility of the evidence submitted that it cannot support the application. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.