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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 202 13579

Office: NEW YORK

Date: AUG 02 2007

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. 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel reiterates the applicant's claim and submits additional affidavits.

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 (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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 furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 20, 2005. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at “[redacted], Brooklyn, New York” from January 1981 to 1985 and at the [redacted] located at [redacted] New York, New York, from 1985 to 1994. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked as an “ambulant street vendor” in [redacted] from 1984 to the filing date of the application.

At his interview with a CIS officer on January 30, 2006, the applicant stated that he first entered the United States in 1981 using a friend's visa. According to the officer's notes, the applicant stated that he worked as a street vendor selling watches during the requisite period. When asked if he had traveled outside the United States, the applicant indicated that he went to Senegal in 1995 for one month because his father was ill. The applicant did not list any absences outside the United States at part #32 of the Form I-687.

On January 30, 2006, the district director issued a notice informing the applicant of her intent to deny his Form I-687 application because the applicant had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim.

The applicant, in response, submitted a personal statement in which he explained that he entered the United States without inspection in late 1981. He stated, "Those Responsible for the transportation were paid in cash in hand." This statement contradicts his claim during his legalization interview that he entered the United States using a friend's visa.

The applicant further stated that he went to Canada with some friends in December 1986 for Christmas and returned to the United States in early January 1987. He stated, "On Each Account of those three (3) Trips, we Proceeded the Very Same Way as in Late 1981." The applicant did not claim this purported trip to Canada in December 1986 on the Form I-687. He indicated on the application that he did not have any trips outside the United States.

The applicant provided an un-notarized affidavit dated September 21, 2005, from [REDACTED] stating that she had known the applicant since before December 31, 1981. She further stated that she can attest to the applicant's continuous residence in the United States from that date to May 4, 1988. However, [REDACTED] did not provide any information regarding how she met the applicant, the frequency of her contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also provided a letter dated March 24, 2005, from [REDACTED] and [REDACTED] of [REDACTED] New York, New York. [REDACTED] stated that they had known the applicant for many years, but they did not provide any information regarding the date they met the applicant, how they met the applicant, the applicant's addresses in the United States during the requisite period, or any other verifiable information to corroborate the applicant's claim.

The applicant included an affidavit dated February 17, 2006, from [REDACTED]. [REDACTED] stated that she had known the applicant since 1986. However, she did not provide any information as to how she met the applicant, the frequency of her contact with the applicant, or his addresses in the United States during the requisite period.

On appeal, counsel reiterates the applicant's claim of continuous residence in the United States during the requisite period. Counsel submits a second affidavit dated June 1, 2006, from [REDACTED]. [REDACTED] who states that she has resided in the [REDACTED] neighborhood of Manhattan since 1972, attests that she has known the applicant for over twenty years, "since he began working at various restaurants in the neighborhood." She further states, "[w]hen he started working permanently at the coffee shop next door we saw him daily in the mornings, and often twice a day for our afternoon coffeekes." [REDACTED] does not provide any information as to when the applicant began working at her neighborhood coffee shop. Nor did

she provide any verifiable information such as the applicant's addresses in the United States during the requisite period. It is noted that the applicant did not claim any employment in restaurants or coffee shops on the Form I-687 or during his legalization interview. Rather, he stated that he was a street vendor.

Counsel also submitted an affidavit dated May 31, 2006, from [REDACTED] who states that he has resided at "[REDACTED] New York, New York" for the last thirty-two years. [REDACTED] further states that he has known the applicant since 1992 when the applicant began working "at his present place of employment." Since [REDACTED] did not meet the applicant until 1992, he cannot attest to the applicant's continuous residence in the United States during the requisite period.

Counsel included an affidavit dated June 1, 2006, from [REDACTED] [REDACTED] states that she has known the applicant since 1986 when he began working in her community. She further states, "I know that [REDACTED] has worked in various restaurants in our community, and he has worked most recently at the restaurant on [REDACTED] for fourteen years," or sometime in 1992. [REDACTED] did not provide the name of any of the applicant's places of employment during the requisite period, nor did she provide any verifiable information such as the applicant's addresses in the United States during the requisite period. Additionally, since [REDACTED] did not meet the applicant until 1986, she cannot attest to his residence in the United States from prior to January 1, 1982 to 1986.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only four people concerning that period, all of which lack sufficient verifiable information to corroborate the applicant's claim.

The absence of sufficiently detailed supporting 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 applicant's contradictory statements on his application and during his legalization interview 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.