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**U.S. Citizenship  
and Immigration  
Services**

LI



FILE: [REDACTED]  
MSC-05-291-10938

Office: NEW YORK

Date: AUG 15 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: Self-represented

**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.

A handwritten signature in black ink, appearing to read "R. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 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, the applicant submits a notarized statement as evidence of his continuous residence in the United States during the requisite period. The applicant attempts to account for a contradiction in his previously furnished 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 (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. 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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on July 18, 2005. Part 30 of this application requests the applicant to list all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Brooklyn, NY from January 1981 until June 1983 and [REDACTED], Brooklyn, NY from June 1983 until February 1993. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with All City Construction Co., Brooklyn, NY, from December 1981 until May 1985; [REDACTED], Fresno, CA, from May 1985 until August 1985; and All City Construction Co., Brooklyn, NY, from September 1985 until January 1992. This information indicates that the applicant has continuously resided in the United States during the entire requisite period; however this claim is not supported by credible and probative evidence.

The applicant submitted with his application two "fill in the blank" notarized statements from [REDACTED] and [REDACTED]. The letter from [REDACTED] provides that she known the applicant since 1981. The letter from [REDACTED] provides that he has known the applicant since January 1985. These statements are vague and lack considerable detail. The statements fail to provide any information on the authors' first acquaintance with the applicant. The statements also fail to provide any information on the extent of the authors' contact with the applicant throughout his requisite period of continuous residence in the United States.

The applicant also submitted in support of his application a Form I-700, Application for Temporary Resident Status as a Special Agricultural Worker, and a Form I-705, Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status. The application indicates that the applicant's employer during the period of May 30, 1985 through August 9, 1985 was [REDACTED] at a farm located in Fresno, CA. The applicant submitted a Legalization Fee Receipt, dated September 1, 1987, and a copy of his Employment Authorization Document, dated June 2, 1988, as evidence of his filing this application. Part 23 of the Form I-700 application requests the applicant to list all periods of his residence in the United States since May 1, 1983. The applicant listed his first address as [REDACTED] Salem, CA from May 1985 until August 1985. The applicant failed to provide any other address information prior to this date on his Form I-700. This indicates that the applicant's period of residence in the United States started in May 1985.

The applicant submitted a "fill in the blank" notarized statement from his purported former employer, [REDACTED]. This statement provides that the applicant resided at [REDACTED] Selma, CA from May 30, 1985 until August 9, 1985. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) state that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [REDACTED] does not meet the criteria delineated in the regulations. The letter fails to explain the applicant's exact period of employment and employment duties. It also fails to indicate whether the [REDACTED] has personal knowledge of the applicant's residence between May 30, 1985 and August 9, 1985. Furthermore, the letter fails to explain whether the

information provided was taken from official company records or the reason these records are unavailable.

On April 11, 2006, the director issued a Notice of Intent to Deny (NOID) the application based on the applicant's failure to provide evidence of residence in the United States prior to January 1, 1982. In response to the director's NOID, the applicant submitted the following documents to corroborate his residence in the United States during the requisite period:

- An original statement from the Worker's Compensation Board of the State of New York. This statement provides that the applicant received compensation payments for a disability from July 12, 1986 until February 25, 1988;
- An original letter from [REDACTED] with Friedman & Moses, LLP, which provides, "I represented [REDACTED] with regard to a claim for Workers' Compensation benefits and damages for personal injuries which occurred in Brooklyn, New York approximately July 1986.";
- An original receipt for registered mail containing the applicant's address in the United States, postmarked stamped October 7, 1985; and
- An original check stub from the State Bank of India, indicating that a check was sent from India to the applicant's address in the United States on October 7, 1985.

These documents are credible and probative evidence of the applicant's residence in the United States as of October 7, 1985. However, the applicant has failed to provide credible evidence of his residence in the United States prior to this date.

The applicant also submitted a notarized letter from [REDACTED] in response to the director's Notice of Intent to Deny (NOID). This letter, dated April 29, 2006, provides the following:

I met [REDACTED] in 1981 when I used to live at [REDACTED] Brooklyn[.] He lived as our neighbour [sic] in the same complex. We met regularly and in 1986 he had an accident and was admitted in Martin Luther Hospital where I visited him. Then I moved to [REDACTED] in Brooklyn. [REDACTED] also stayed in the same complex. In 1991 I moved to [REDACTED] Long Island. He moved to [REDACTED] [REDACTED] and currently resides at this address [sic].

It should be noted that the address information provided by [REDACTED] is inconsistent with the applicant's Form I-687 application. The applicant has not provided [REDACTED] as an address on his Form I-687 application. The applicant's record indicates that his current address is [REDACTED] Glen Oaks, NY. [REDACTED] indicates that she was the applicant's neighbor at [REDACTED] Brooklyn, NY and [REDACTED] Brooklyn, NY, however she has failed to provide the dates of her residences at these address. Moreover, Ms. [REDACTED] has failed to provide detailed information on the extent of her contact with the applicant during the requisite period. On appeal, the applicant submitted another letter from [REDACTED] notarized on July 10, 2006, which provides that she has known the applicant for "25/26 years."

This letter fails to provide any additional information on [REDACTED]'s contact with the applicant during the requisite period of continuous residence.

Although [REDACTED]'s statements provide some information on her relationship with the applicant during the requisite period, they do not alone satisfy the applicant's burden of proof. As illustrated above, [REDACTED] statements lack detail on several significant points. 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).

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 254a.2(d)(6). The applicant has provided probative and credible documentation of his presence in the United States as of October 7, 1985. However, the applicant failed to provide credible and probative documentation of his continuous residence in the United States prior to this date. The notarized statements provided by the applicant to corroborate his continuous residence in the United States during the requisite time period lack detail and therefore are not probative and credible evidence. Hence, the applicant has failed to provide sufficient evidence of his continuous residence in the United States during the *entire* requisite period.

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 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.