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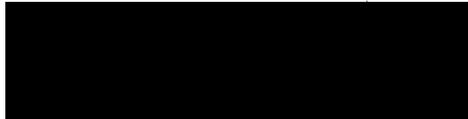
FILE: [REDACTED]  
MSC 05 334 12496

Office: NEW YORK Date: DEC 18 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:



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. 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, on August 30, 2005. The district 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 district director denied the application as 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 reiterates his claim of continuous residence in the United States during the requisite period and asserts that he has submitted sufficient evidence to corroborate his claim.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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 Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), 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 August 30, 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]” from March 1981 to June 1987 and at “[REDACTED], New York, New York” from June 1987 to August 2002. At part #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Mexico “on an emergency trip” from August 1987 to September 1987.

During his interview with a CIS officer, the applicant stated that he was in Mexico for “a few months” to get married in 1984. The applicant failed to list this absence outside the United States on the Form I-687.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated August 20, 2005, from [REDACTED] a resident of Astoria, New York. Mr. [REDACTED] stated that he had known the applicant since 1981 when they worked in the same area. However, Mr. [REDACTED] provided no information regarding the

applicant's addresses in the United States or the frequency of his contact with the applicant during the requisite period.

The applicant also submitted an affidavit dated August 15, 2005, from [REDACTED], a resident of New York, New York. Ms. [REDACTED] stated that she met the applicant briefly in 1987 when he was working as a busboy at Indian City Restaurant. She stated that she lost contact with the applicant until she encountered him again in 1998. However, Ms. [REDACTED] failed to provide any verifiable information such as the applicant's addresses in the United States during the requisite period. Furthermore, if Ms. [REDACTED] met the applicant briefly in 1987 and did not see him again until 1998, she cannot attest to the applicant's residence in the United States throughout the requisite period.

The applicant included a letter dated March 15, 2006, from Father [REDACTED], Pastor of [REDACTED] Bronx, New York." Father [REDACTED] stated that the applicant had been an active member of his parish for over 20 years.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The letter from Father [REDACTED] does not conform to this standard. Father [REDACTED] did not provide the inclusive dates of the applicant's membership in his parish, nor did he provide the applicant's addresses in the United States during the requisite period. Furthermore, Father [REDACTED] failed to provide any information establishing the origin of the information he provided in his letter.

The applicant provided an affidavit dated March 27, 2006, from [REDACTED] a resident of Bronx, New York. Mr. [REDACTED] stated:

I [REDACTED] want to offer myself to help Mr. [REDACTED] that I know since the year of 1984 when he used to come to these [sic] building [REDACTED] 2 St. in were [sic] I was super for 25 years he used to come here because in here he meet his now wife. . . .

Mr. [REDACTED] further stated that he continued to maintain contact and friendship with the applicant and his wife. However, Mr. [REDACTED] failed to provide any verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant also provided an affidavit dated March 23, 2006, from [REDACTED] i, a resident of New York, New York. Ms. [REDACTED] stated that she first met the applicant in 1985 when he worked for Indian City Restaurant located at "[REDACTED] New York, New York." Ms. [REDACTED] explained that she came to know the applicant because she often ate at that restaurant

and they became very good friends. However, Ms. [REDACTED] provided no verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant included an affidavit from [REDACTED], a resident of Bronx, New York. Mr. [REDACTED] stated that he first met the applicant in 1981 when he tried to help the applicant find a job. Mr. [REDACTED] explained that he and the applicant used to spend time together because the applicant had no family or friends in New York City when he first moved to the area. Mr. [REDACTED] stated that he and the applicant continued to be friends after the applicant got married and moved to a new address.

On appeal the applicant asserts that he has submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The applicant states that he has provided a "reasonable explanation" for the discrepancy in his claimed dates of absence outside the United States.

Although the applicant asserts on appeal that he has provided a reasonable explanation for the contradiction in his claimed dates of absence outside the United States, the record does not corroborate his statement. There is no document or statement from the applicant in the record of proceeding explaining the discrepancy in his claimed dates of absence outside the United States. This discrepancy in the applicant's claimed dates of absences raises questions of credibility regarding his claim.

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, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 six individuals, all of which lack sufficient verifiable detail 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 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.