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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: NEWARK

Date:

JUL 19 2007

MSC 05 265 13077

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.

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, Newark, New Jersey, 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 asserts that the applicant has submitted sufficient evidence to establish continuous residence in the United States during the requisite period.

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 June 22, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Ceres, California” from February 1981 to May 1981 and at [REDACTED] Mount Prospect, Illinois: from May 1981 to November 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 13, 2002, from [REDACTED] Resident Manager of Ramapo Gardens, Mahwah, New Jersey. [REDACTED] stated that the applicant came to Ramapo Gardens to apply for an apartment in March 1986 but there was no vacancy at that time. [REDACTED] further stated, “[he] returned from time to time until I could him the apartment he now has.” The record contains another affidavit from [REDACTED] dated April 15, 2002. In this affidavit [REDACTED] stated that the applicant had been a resident at Ramapo Gardens in Mahwah, New Jersey, since 1990. [REDACTED] does not attest to the applicant’s presence in the United States prior to 1986.

The applicant also submitted an affidavit dated May 9, 2002, from [REDACTED] of Ramsey, New Jersey. [REDACTED] stated that he had known the applicant as a family friend "for many years." [REDACTED] further stated that the applicant stayed with him for two weeks at his residence located at [REDACTED] Mahwah, New Jersey" in March of 1986. However, [REDACTED] did not provide the inclusive dates of his acquaintance with the applicant or the applicant's addresses of residence during the requisite period. Furthermore, as with [REDACTED] [REDACTED] did not attest to the applicant's presence or residence in the United States prior to 1986.

The applicant included an affidavit dated April 24, 2002, from [REDACTED] of Ceres, California. [REDACTED] stated that she has known the applicant since February 1981. She explained that the applicant was friends with her son, [REDACTED] who passed away in November of 1996. [REDACTED] further stated that the applicant resided in her home located at [REDACTED] Ceres, California," but she did not provide the inclusive dates of the applicant's residence in her home.

The applicant subsequently submitted another affidavit dated March 12, 2003, from [REDACTED] [REDACTED] stated that she had known the applicant since February 1981 and he was her friend. However, [REDACTED] did not provide the applicant's addresses in the United States during the period of their acquaintance.

The applicant subsequently submitted a third affidavit from [REDACTED] dated September 10, 2004. [REDACTED] stated in this affidavit that she had only been able to locate one receipt to prove that the applicant was in the United States in March 1981. She included a photocopy of a cash receipt from Little Guy Lumber dated March 24, 1981. [REDACTED] explained that she gave her son [REDACTED] \$50.00 to go to the lumber yard for her and told him that he could keep the change. She stated that the applicant and her son [REDACTED] were gone all day and she got mad at them because they delayed bringing her purchases to her. The receipt in question indicates that two items totaling \$19.07 including tax were purchased on March 24, 1981, but the receipt does not identify the purchaser. Therefore, the receipt cannot be accepted as proof of the applicant's presence in the United States as of that date. [REDACTED] further states that the applicant purchased two paintings from her art gallery in Ceres, California, in February or March of 1981, but she did not give the applicant a purchase receipt that could corroborate her statement.

The applicant subsequently submitted a fourth affidavit from [REDACTED] dated August 15, 2005. [REDACTED] repeated her statement that she had known the applicant since February 1981 because he was a friend of her son [REDACTED]. [REDACTED] explained that she was able to attest to the applicant's residence in the United States from January 1, 1982 to May 4, 1988, because the applicant resided with her and her son in her home located at [REDACTED] Ceres, California" part of the time. However, [REDACTED] did not provide the inclusive dates of the applicant's residence in her home.

The applicant submitted a photocopy of pages of a duplicate Indian passport issued by the Consulate General of India, New York, New York, on March 19, 1997. A notation on Page 35 of this passport indicates that the duplicate passport was issued to replace the applicant's Indian Passport No. [REDACTED] issued at Delhi, India, on July 20, 1988, because the 1988 passport was damaged and canceled. The applicant indicated at block #32 of the Form I-687 application, where

applicants are instructed to list all absences outside the United States, that he was in India for a family visit from October 11, 1987 to November 12, 1987. This statement is contradicted by the fact that the applicant was apparently in India in July 1988 when his previous passport was issued. The applicant has not provided any explanation for this discrepancy.

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).

The applicant also submitted an affidavit dated April 23, 2003, from [REDACTED] of Mahwah, New Jersey. [REDACTED] stated that he had known the applicant since November 1985, when he met the applicant at a temple in Glenrock, New Jersey. However, [REDACTED] did not provide any specific verifiable information such as the applicant's addresses in the United States during the requisite period. Furthermore, [REDACTED] did not attest to the applicant's residence in the United States prior to November 1985.

The applicant subsequently submitted another affidavit from [REDACTED] dated August 22, 2005. [REDACTED] repeated his statement that he first met the applicant at a temple in Glenrock, New Jersey, in November 1985. [REDACTED] stated that he could attest that the applicant lived in the United States between 1982 and May 1988 because "I prepared my tax forms." If [REDACTED] intended to say that he had prepared the applicant's tax forms during the period from January 1, 1982 through May 4, 1988, he did not submit photocopies of any tax documents from that period to corroborate his claim. It is noted that the record contains a photocopy of the applicant's Social Security Statement dated January 26, 2005. This statement does not reflect any taxed social security earnings until the year 1990.

The applicant submitted an affidavit dated April 15, 2002, from [REDACTED] in which she stated that the applicant had been a very good friend of hers for 10 years. Since the affidavit is dated April 15, 2002, this would appear to indicate that [REDACTED] had known the applicant since 1992.

The applicant subsequently provided another affidavit dated April 11, 2003, from [REDACTED]. [REDACTED] stated that she had known the applicant since March 1986 when she met him at Ramapo Gardens. There are two problems with [REDACTED]'s statement in this affidavit. First, [REDACTED] indicated in his affidavit dated April 15, 2002, that the applicant did not move into an apartment in Ramapo Gardens until 1990. Second, [REDACTED] previously stated in her affidavit dated April 15, 2002, that she had known the applicant for ten years, or since some time in 1992. [REDACTED] did not provide any explanation as to how she met the applicant in 1986 if he didn't begin living in Ramapo Gardens until 1990. Nor did she explain the contradiction in the date she first met the applicant.

The applicant subsequently submitted a third affidavit from [REDACTED] dated March 31, 2003, in which she stated that she had known the applicant since March 1986, when they met at Ramapo Gardens because he was her neighbor and friend. As previously stated, [REDACTED] did not explain how could have known the applicant as a friend and neighbor since 1986 if he didn't move to Ramapo Gardens until 1990. Furthermore, [REDACTED] does not attest to the applicant's residence in the United States prior to March 1986.

The applicant submitted a fourth affidavit from [REDACTED] dated August 27, 2005. [REDACTED] repeated her statement that she first met the applicant in March 1986 at [REDACTED] Gardens because he was a neighbor and friend. However, as previously stated, [REDACTED] the General Manager of Ramapo Gardens, stated in his affidavit dated April 15, 2002, that the applicant did not begin residing at Ramapo Gardens until 1990.

On appeal, counsel states that the applicant is not relying on affidavits alone to establish continuous residence in the United States during the requisite period. Counsel states that the applicant has submitted additional documents such as taxes and receipts. Counsel states, "while it may be true that [REDACTED] may not rest all of his case on the use of affidavits, the USCIS should still give some weight to them in conjunction with other additional documents submitted." These documents referenced by counsel are all dated after the requisite period from prior to January 1, 1982 through May 4, 1988, and do not establish the applicant's residence in the United States during the requisite period.

Contrary to counsel's statement, the applicant has submitted only affidavits to corroborate his claim of continuous residence in the United States during the requisite period. Only one affiant, [REDACTED], attests to the applicant's continuous residence in the United States since 1981. None of the other affiants attest to the applicant's residence in the United States prior to 1985. As previously noted, the affidavits submitted in support of the applicant's claim of continuous residence in the United States during the requisite period either contain discrepancies or lack sufficient specificity to corroborate the applicant's claim.

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 that lack sufficient consistency and specificity to corroborate the applicant's claim. Additionally, the applicant's duplicate passport indicates that he was in India as of July 23, 1988, but the applicant indicated on the Form I-687 that his only absence outside the United States was from October 11, 1987 to November 12, 1987. The applicant has not provided any explanation for the discrepancies noted above.

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 contradictions and discrepancies noted above 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.