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U.S. Citizenship  
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Services

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[REDACTED]

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FILE:

[REDACTED]  
MSC-05-159-12699

Office: NEW YORK

Date:

NOV 05 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.

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. The director certified her decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The application will be denied.

In her initial decision dated April 19, 2006, the director denied the application in part because of questions surrounding the applicant's class membership, yet the director failed to issue a Notice of Intent to Deny regarding this issue, as required. As a result, the AAO withdrew the decision and remanded for the director's reconsideration. In her decision of August 15, 2007, the director denied the application because the applicant failed to provide any credible evidence to support his claim. The decision was certified to the AAO.

On appeal, the applicant attempted to explain deficiencies in his documentation by stating that he was a child when he entered the United States. The applicant provided no additional documentation.

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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on March 8, 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 showed his only address in the United States to be at [REDACTED] from September 1981 to present. At part # 32 where applicants were asked to list all absences from the United States Since entry, dating back to January 1, 1982, the applicant listed no absences prior to 1999.

The applicant also submitted two affidavits with his form I-687. The first affidavit, from [REDACTED] states that the affiant has known the applicant in the United States since 1986. The applicant did not provide a contact telephone number for the affiant or documentation of the affiant's identity, presence in the United States during the requisite period, or relationship with the applicant. The second affidavit, from [REDACTED], states that the affiant has known the applicant in the United States since 1988. This statement is contradicted by another sentence in the same affidavit, which states that the applicant lived with the affiant from June 1986 to April 1989 at the applicant's current address in New York. The applicant provided no contact number for the affiant or documentation of the affiant's identity, presence in the United States, or relationship with the applicant.

At his interview with an immigration officer in January 2006, the applicant stated that his first entry into the United States was in April 1981. However, no residence in the United States is listed for the applicant on Form I-687 prior to September 1981. During the interview with an immigration officer, the applicant could not remember his complete address when he first came to the United States, although Form I-687 indicates the applicant has had only one address in the United States since 1981 and he continues to reside there. The applicant also stated that he did not leave the United States until 1999.

In response to a Notice of Intent to Deny issued on February 10, 2006, the applicant submitted three affidavits. The first affidavit, from [REDACTED], states that the affiant knew the applicant when he was "about seven to eight years old." This indicates the affiant met the applicant sometime between 1983 and 1985, considering that the applicant was born on February 1, 1976. The affiant met the applicant and the applicant's uncle in the Bronx when the applicant's uncle was selling household materials. The affidavit lists a contact phone number for [REDACTED]. Although not required, the applicant did not include documentation of the affiant's identity, presence in the United States during the requisite period, or his relationship with the applicant. The second affidavit, provided by [REDACTED], states that the affiant has known the applicant for ten years as a tenant from April 1989 to July 1999. Although not required, the applicant did not provide supporting documentation of the affiant's identity, presence in the United States during the requisite period, or relationship with the applicant. The third affidavit was provided by another individual named [REDACTED] who stated that he has known the applicant for almost five years as a tenant from April 1981 until 1986. It is noted that the address and telephone number listed on both affidavits from individuals named P [REDACTED] match each other. One of these affidavits indicates the applicant and [REDACTED] met through the applicant's uncle's work selling materials in approximately 1983 to 1984, while the other affidavit indicates the applicant and [REDACTED] met when the applicant was a tenant from April 1981 to 1986. This inconsistency calls into question whether [REDACTED] can actually confirm the applicant's residence during the requisite period.

In denying the application, the director noted that the applicant failed to provide any credible evidence to support his claim.

On appeal the applicant suggested that the evidence he could provide was limited by the fact that he arrived in the United States as a young child. The applicant did not provide any additional documentation on appeal.

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 affidavits that lack sufficient detail, conflict with each other, conflict with the applicant's statements, or do not establish the applicant's residence in the United States throughout the requisite period. In addition, the applicant's testimony in his interview with an immigration officer conflicts with his statements on Form I-687.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in applicant's I-687 application and the record of his interview with an immigration officer, the conflicting information in his supporting affidavits, and 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. Accordingly, the AAO shall not disturb the director's denial of the application.

**ORDER:** The director's August 15, 2007 decision is affirmed. The application is denied.