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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-101-16005

Office: NEW YORK

Date: APR 15 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 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. The director stated that a Notice of Intent to Deny (NOID) was issued to the applicant on July 21, 2006, but that the applicant failed to respond. Therefore, the application was denied for the reasons stated in the NOID. Specifically, the director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her 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 stated that she was not notified of the director's intent to deny her application on July 21, 2006. She was not aware that a NOID had been sent to her and she was afforded time to respond. If she had received the notice she would respond. The applicant stated that she met all the requirements of establishing her eligibility for temporary resident status. It is noted that the record indicates the NOID was issued on July 21, 2006 to the two most recent addresses provided by the applicant as of that date. One of these addresses included the address where the decision was received by the applicant, based on which the applicant later filed her appeal. The record contains no evidence indicating that the copies of the NOID were returned as undeliverable. Therefore, the NOID is determined to have been properly issued.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 period, 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. 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 listed the following addresses during the requisite period:

[REDACTED], Ozone Park, New York from November 1981 to March 1984; and [REDACTED], Jackson Heights, New York from March 1984 to May 1986; and [REDACTED], New York, New York from May 1986 to October 1988. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et

cetera, the applicant listed the following organizations: Tsung Sun Social Club from December 1981 to present; and World Buddhist Association from December 1981 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Canada to see a seriously ill uncle during February 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant provided multiple affidavits that were virtually identical. These include the affidavits from S [REDACTED] dated February 15, 2005; from S [REDACTED] dated February 3 and February 15, 2005; and from [REDACTED] dated February 10 and February 15, 2005. These affidavits stated that the affiant has known that the applicant has lived continuously and unlawfully in the United States from before January 1, 1982 to January 11, 1988. None of the affidavits include detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result, these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a declaration from [REDACTED] abbot of the American Society of Buddhist Studies. This declaration states that the applicant has congregated regularly at the temple of the American Society of Buddhist Studies every week since before January 1, 1982 through May 4, 1988, except for brief absences on February 15 and February 23, 1987. The declaration also states, "We have also known that [the applicant has] resided continuously unlawfully from before January 1, 1982 through May 4, 1988 . . . except for brief and innocent absence(s)." This declaration is inconsistent with the information provided on the applicant's Form I-687, where she failed to indicate that she was affiliated with the American Society of Buddhist Studies. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

In denying the application the director noted that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant stated that she met all the requirements of establishing her eligibility for temporary resident status.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that lack sufficient detail, conflict with the applicant's Form I-687, or fail to conform to regulatory standards. Specifically, the affidavits from [REDACTED] dated February 15, 2005; from [REDACTED] dated February 3 and February 15, 2005; and from [REDACTED] dated February 10 and February

15, 2005 all lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. The declaration from [REDACTED] conflicts with the applicant's Form I-687 and fails to conform to regulatory standards. 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 between the applicant's statements on her application and the documentation she provided, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.