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

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FILE:

MSC-04-363-10068

Office: NEW YORK

Date:

APR 22 2008

IN RE:

Applicant:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a light-colored background.

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 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 director denied the application, finding that 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, counsel states that the affidavits submitted are credible and that the applicant has submitted sufficient evidence to establish his eligibility for temporary residence status.

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).

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)(1) 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. See 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 his or 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 September 27, 2004.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter and photographs from [REDACTED], the Pastor of the Church of the Revelation in which he stated that the applicant has been a member of the congregation since December of 1981
- A letter from [REDACTED] the manager of Bag Country Trading Inc. in which he stated that the applicant has been a customer at the store since 1981.
- A letter from [REDACTED] the manager of the Hotel Mansfield in which he stated that the applicant resided at the hotel from December of 1981 to June of 1985.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he met the applicant at a birthday party in Brooklyn.

- An affidavit from [REDACTED] in which she stated that she has known the applicant as a street vendor since 1981 when she purchased merchandise from him.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981 and that they met on 45th Street, while he was selling merchandise as a vendor. She lists his addresses in New York.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981 and that they met at a dance in the Savoy Manor. She lists his addresses in New York.

These attestations are not detailed concerning the declarant's communication and/or contact with the applicant throughout the requisite period, and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted copies of his passport and of two postmarked envelopes addressed to him in the United States and postmarked 1981 and 1986. This evidence is insufficient to establish the applicant's continuous unlawful residence in the United States since before January 1, 1982

In the Notice of Intent to Deny (NOID), the director questioned the authenticity of the evidence submitted and determined that the affidavits submitted by the applicant did not contain evidence that the affiants were present in the United States during the requisite period and documentation identifying the affiants.

In response to the NOID, the applicant submitted a letter from the principal of the Washington Irving Evening High School in which he stated that the applicant had been a student at the school in the spring semester of 1981/1982. He also submitted a copy of a student program card dated July 5, 1982. The applicant submitted an affidavit from [REDACTED] in which she stated that she met the applicant in 1981 at a Laundromat. He submitted an affidavit from [REDACTED] in which she stated that she met the applicant in 1981 at the Church of Revelation. He also submitted an affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 when they met at a fishing place in Long Island, New York. The affiants listed the applicant's addresses from 1981 through 1988 and they included their identity documents. The applicant also submitted an identification card issued to him on February 11, 1983 from [REDACTED]

The applicant also submitted a letter from the Associate Pastor of the Church of the Revelation in which he stated that the applicant had been a member of the church since December of 1981. And he submitted copies of the churches history booklet and member index that included the applicant's biographical information. The applicant resubmitted a copy of [REDACTED]'s affidavit. He also submitted an affidavit from [REDACTED] in which he stated that he has known the applicant since December of 1981 when he met him at a restaurant in Manhattan, New York. The affiant submitted a copy of his identity card.

In denying the application the director noted that the affidavits submitted by [REDACTED] and [REDACTED] did not contain evidence that they were in the United States during the

requisite period. She further determined that the affidavits from [REDACTED] and [REDACTED] did not contain evidence that the affiants were present in the United States during the requisite period or documentation identifying the affiants. The director noted that the applicant had failed to indicate during his interview with immigration officers or in his Form I-687 application his absence from the United States in 1983. The director also determined that the authenticity of other documents submitted by the applicant was at issue.

On appeal, the applicant attempts to explain the contradictions and inadequacies. He states that one does not have to be present in [REDACTED] in order to receive identity documents. He resubmitted as evidence copies of the Church of the Revelation history booklet and letter confirming the applicant's membership since December of 1981. The applicant also submitted the following affidavits:

- An affidavit from [REDACTED] in which she stated that she was born in Aiken, South Carolina in December of 1946 and that she met the applicant at the Church of Revelation. She further stated that she has moved a lot since 1981, but became friends with the applicant and managed to keep in touch with him. She listed her three addresses in New York where she allegedly resided from January of 1982 through May of 1988. She submitted copies of her New York State Identification Card, her State Registration Card, and Verizon bill dated March of 2006.
- An affidavit from [REDACTED] in which he stated that he was born in Red Spring, North Carolina, and that he has known the applicant since 1981 when they met in a security class. He further stated that he and the applicant became friends, that they visited with each other every weekend, and that the applicant would attend his birthday party. He listed his address in New York where he allegedly resided from January of 1982 through May of 1988. He submitted copies of his birth certificate, New York State Driver License, Lance identification card, and Safe Driver Certificate dated November 30, 1981.

In the instant case, the applicant has failed to overcome the discrepancies raised by the director in the NOID, and in her final decision. There has been no evidence submitted to explain the applicant's absence from the United States in 1983. Neither the attestation from the manager of the Hotel Mansfield nor the handwritten copy of the Irving Evening High School program has been corroborated by supporting documentation. The attestations submitted by the applicant prior to the director's decision are not credible and lack detail, and therefore, can only be afforded very minimal weight in establishing the applicant's residence during the requisite period. Although the affidavits submitted by the applicant on appeal present some evidence of his residence in the United States prior to January 1, 1982, they are insufficient to support the applicant's claim of continuous unlawful residence throughout the entire requisite period.

It is noted that the applicant stated on his Form I-687 application submitted to establish his class membership that he was self-employed as a vendor from December of 1981 to his date of filing. On the other hand, the applicant stated on his 2004 Form I-687 application, part #33 that he had been self-employed as a vendor from December of 1981 to May of 1983, and employed by Escape Restaurant from May of 1983 to February of 1989. The applicant has failed to provide an explanation for this inconsistency. 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. It is incumbent upon 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 (BIA 1988).

The absence of sufficiently detailed 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 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.