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U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]  
MSC-05-134-10081

Office: NEW YORK

Date: **DEC 12 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:

SELF-REPRESENTED

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 be "J. Grissom".

John F. Grissom, Acting 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 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 denied the application, finding that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982 and then continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and he submits additional evidence in support of his application to address discrepancies noted by the director.

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 245(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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The record indicates that the applicant was arrested by the New York Police Department on three charges on or about April 22, 2004: 1) A violation of Public Law § 170.25 *Criminal possession of a forged instrument in the second degree*; 2) a violation of Local Law; 3) a violation of New York Tax Law § 1817 *Sales Tax Violation*. The record indicates that the applicant was convicted upon a plea of guilty of New York Penal Code § 170.05 *Attempted Possession of a Forged Instrument in the 3<sup>rd</sup> Degree*, a misdemeanor as a result of these arrests. The applicant's one conviction of a misdemeanor does not cause him to be ineligible to adjust to temporary resident status.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant's friends. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

Before submitting his appeal, the applicant submitted two affidavits in support of his application, one from [REDACTED] and the other from [REDACTED]. These affiants state that they have known the applicant since 1981 and 1986 respectively. However, when [REDACTED] was contacted by an immigration officer in February of 2007, she stated that she had known the applicant for about 10 years. This indicates that this affiant did not actually meet the applicant until after the requisite period ended. Further, these affidavits are significantly lacking in detail. Though each affiant states that they first met the applicant in the United States, neither states the frequency with which they saw the applicant during the requisite period or indicates whether there were periods of time during the requisite period when they did not see the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. In this

case, the inconsistency between [REDACTED]'s statement in her affidavit and her statement at the time of her conversation with an immigration officer in 2007 casts doubt on whether she knew the applicant during the requisite period. Further, the affidavit from [REDACTED] is lacking in detail such that it can only be accorded minimal weight as evidence that the applicant resided in the United States from 1986 until the end of the requisite period.

On appeal, the applicant submits a second affidavit from [REDACTED] in an attempt to explain the discrepancy previously noted. In this second affidavit, the affiant states that during her conversation with the immigration officer in February of 2007, she misspoke when she stated that she had known the applicant for 10 years. She asserts that she has actually known the applicant since 1981. She explains that she can date her first meeting with the applicant because her mother had passed away at that time and states that she was not thinking well when the United States Citizenship and Immigration Services (USCIS) officer called her because her father had just passed away.

Though this affiant provides an explanation for the discrepancy between her previously submitted affidavit and the testimony she provided to a USCIS officer, she has not stated in this affidavit or in her previously submitted affidavit the frequency with which she saw the applicant during the requisite period or the whether there were periods of time during the requisite period when she did not see the applicant. Because the affidavits are significantly lacking in detail, considered both separately and together with other evidence in the record, they are of minimal probative value.

The record also contains the applicant's Form I-687, which was executed under penalty of perjury. This Form I-687 indicates that the applicant maintained a residence in the United States beginning in May 1999, that he has never been absent from the United States and that he has not been employed in the United States. Because the applicant has not indicated on this form that he was employed during the requisite period and because he has not indicated an address of residence associated with that time, doubt is cast on whether the applicant resided in the United States during the requisite period. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The inconsistency between the applicant's current claim that he resided in the United States for the duration of the requisite period and his testimony on his Form I-687 are significant and are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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