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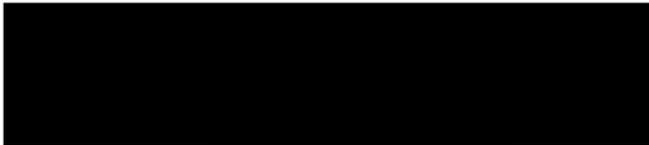
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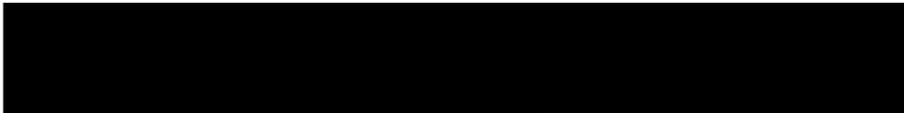
FILE: [REDACTED]  
MSC-05-130-10785

Office: NEW YORK Date: **FEB 13 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:



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, 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 for the applicant stated that the director failed to recognize that affidavits are sufficient to establish eligibility for temporary resident status, the director erred in stating that documents submitted by United States citizens do not contain proof that they were in the United States during the requisite period, and that this assertion is an abuse of process and a denial of equal protection.

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. 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 7, 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 listed the following addresses during the requisite period: [REDACTED] Flushing, New York from June 1981 to September 1987; and [REDACTED] Jamaica Estates, New York from October 1987 to April 2004. At part #32 where applicants were asked to list absences from the United States since entry, the applicant listed only the following trips to Colombia to visit family: May 1982 to June 1982; May 1983 to June 1983; and July 1987 to August 1987.

The record also contains a Form I-485 Application to Register Permanent Residence or Adjust Status submitted by the applicant on June 16, 1998. At part #1 where applicants were asked to list their date of last arrival, the applicant listed June 1, 1986. This is inconsistent with the information provided on the applicant’s Form I-687 where he failed to list any absence from the

United States ending in June 1986. This inconsistency calls into question the applicant's claim to have resided in the United States throughout the requisite period.

The record also includes correspondence among the applicant, the Congressional Liaison of the Immigration and Naturalization Service (Congressional Liaison) and Congressman [REDACTED]

[REDACTED] This correspondence includes a signed letter from the applicant to Congressman [REDACTED] dated February 5, 2002, in which the applicant states he has been living permanently in the United States since 1986. Also included is a signed letter from the applicant to the Congressional Liaison dated December 30, 2002, in which the applicant stated that he has been in the United States since 1986. These written statements by the applicant conflict with his statements on his Form I-687 indicating he has resided in the United States since 1981, and call into question the applicant's claim to have resided in the United States throughout the requisite period.

The record also includes a Motion to Reopen filed by the applicant on June 9, 2004 in relation to his Form I-485 application. In this Motion to Reopen the applicant stated that his father brought him to the United States when the applicant was 15 years old. Since the applicant was born on June 2, 1970, the applicant's statement indicates he entered the United States in approximately 1985 or 1986. This statement conflicts with the applicant's statements on his Form I-687 application, where he indicated that he first entered the United States in June 1981, and calls into question the applicant's claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. The applicant provided a copy of an official transcript from John Bowne High School in Flushing, New York dated September 9, 1996. This transcript lists the applicant's courses during the school year from 1986 to 1987, and indicates this was the applicant's eleventh grade year. The transcript also lists September 8, 1986 as the date when the applicant entered secondary school. This tends to show the applicant resided in the United States from September 8, 1986 until the summer of 1987. Where the transcript indicates the applicant's courses for ninth and tenth grades should be listed, the statement "transcript from Colombia attached" is handwritten. It is noted that the applicant failed to attach his transcripts from Colombia. Where the transcript indicates the applicant's courses for twelfth grade should be listed, nothing is listed. Since the transcript refers to academic transcripts from Colombia for both the 1984-1985 and 1985-1986 school years for the applicant, this transcript tends to show the applicant was absent from the United States throughout 1985. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the transcript indicates the applicant must have been absent from the United States for at least one year of the requisite period, his absence must

have exceeded 45 days. If the applicant fails to provide a qualifying explanation for the delay in his returning to the United States, he will be found not to have resided continuously in the United States throughout the requisite period.

The applicant provided a copy of his immunization history from the New York City Public Schools dated September 19, 1986. This document indicates the applicant received multiple immunizations on August 2, 1986. The document tends to show the applicant was in the United States in September 1986.

The applicant submitted multiple declarations from former employers that fail to confirm that he resided in the United States during the requisite period. These include a letter from [REDACTED], and [REDACTED].

The applicant submitted photocopies of multiple envelopes addressed to him. Several of these envelopes contain postage cancellation date stamps that are illegible. One of the envelopes, addressed to the applicant at the [REDACTED] address, contains a November 1986 postage cancellation date stamp. This tends to show the applicant resided in the United States in November 1986.

The applicant provided an admission document from [REDACTED] in Flushing, New York, listing an admission date for the applicant of August 8, 1986. The document also lists the [REDACTED] address as the applicant's address. This document tends to show the applicant resided in the United States in August 1986.

The applicant provided a letter from Senator Hillary Clinton dated August 5, 2005. In this letter, Senator Clinton stated that the applicant has informed her that he is a "long-time resident" of the United States. Senator Clinton referred to the applicant "[h]aving resided in this country since 1981," but Senator Clinton did not indicate that she has personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, this letter holds only limited evidentiary weight in determining whether the applicant resided in the United States during the requisite period.

The applicant also provided a letter from Senator Jeff Sessions dated August 5, 2005. In this letter, Senator Sessions stated that "[r]ecords indicate that [the applicant] has resided continuously in the United States since 1981," yet Senator Sessions failed to specify the origin of the records to which he referred. Since Senator Sessions did not indicate that he has personal knowledge of the applicant's periods of residence in the United States and failed to provide any other evidence of the applicant's residence, this letter holds only limited evidentiary weight in determining whether the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] in Jackson Heights, New York, which states that the declarant has been the dentist of the applicant since 1984. The declarant failed to provide any explanation of his ability to recall the date at which the applicant became his patient,

and he failed to list the applicant's addresses during the requisite period. [REDACTED] also failed to indicate whether he still holds dental records of the applicant and whether CIS could have access to the records. Since the declaration indicates the applicant is still [REDACTED] patient, and considering [REDACTED]'s failure to provide copies of any dental records for the applicant, this declaration is found to lack sufficient detail to confirm the applicant's residence during the requisite period.

The applicant provided a declaration from his father, [REDACTED]. This declaration indicates that the applicant entered the United States in May 1981 and was home-schooled by [REDACTED] until he entered John Browne High School in September 1986. Although the declaration is prepared by the applicant's father, it fails to list the addresses where the applicant resided during the requisite period and fails to explain why the applicant was home-schooled until the age of sixteen. As a result, this declaration is found to lack sufficient detail to confirm the applicant resided in the United States throughout the requisite period.

The applicant provided a declaration from [REDACTED] the applicant's grandmother. This declaration states that the applicant went to the United States in May 1981, and that the applicant has returned to Columbia for family trips on three occasions, in 1982, 1983, and 1987. Since the declarant failed to specify the length of these trips, this letter does not specifically confirm that the applicant resided in the United States continuously throughout the requisite period.

The applicant provided a declaration from [REDACTED], which states that the declarant is the applicant's godfather and has known the applicant since he entered the United States in May 1981. The declarant stated that the applicant resided at the [REDACTED] address when he arrived in the United States, and that the applicant began living with the declarant and his mother at the [REDACTED] address in October 1987. The declarant also stated that his mother, [REDACTED] home-schooled the applicant until he entered John Bowne High School. This declaration provides no detail regarding the circumstances in which the declarant met the applicant and the declarant's frequency of contact with the applicant prior to October 1987. As a result, this declaration is found to lack sufficient detail to confirm the applicant resided in the United States throughout the requisite period.

In denying the application 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.

On appeal, counsel for the applicant stated that the director failed to recognize that affidavits are sufficient to establish eligibility for temporary resident status, the director erred in stating that documents submitted by United States citizens do not contain proof that they were in the United States during the requisite period, and that this assertion is an abuse of process and a denial of equal protection.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period prior to 1986. He has submitted contemporaneous evidence that tends to show he was absent from the United States for at least one year during the requisite period, and he has failed to establish that, due to emergent reasons, his return to the United States could not be accomplished within the time period allowed. The applicant has made prior statements that contradict his claim to have resided in the United States throughout the requisite period. He has submitted attestations that fail to confirm he resided in the United States during the requisite period, fail to indicate the declarant has personal knowledge of the applicant's residence in the United States, or lack sufficient detail. Specifically, the declarations from [REDACTED] and [REDACTED] fail to confirm the applicant resided in the United States throughout the requisite period. The letters from Senator Clinton and Senator Sessions fail to indicate the declarant has personal knowledge of the applicant's residence in the United States. The declaration from [REDACTED] and [REDACTED] lack sufficient detail.

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 in his applications and other documents, and given 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 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.