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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L1

[Redacted]

FILE: [Redacted] Office: Newark  
MSC 05 186 13692

Date: FEB 27 2008

IN RE: Applicant: [Redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 and May 4, 1988. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country during the requisite period. Counsel contends that the applicant had established his eligibility for class membership under the CSS/Newman Settlement Agreements.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 4, 2005. At parts #16, #17, and #18 of the Form I-687 application, the applicant claimed that he entered the United States at Miami, Florida with a nonimmigrant B-2 visitor's visa on March 18, 1987. At parts #21 through #29 where applicants who had been admitted to this country as a nonimmigrant prior to or during the requisite period were asked to list information relating to such admission, the applicant indicated that he was issued a B-2 visitor's visa on Brazilian passport number [REDACTED] in Brazil on April 10, 1986. Further, 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 [REDACTED] in New York, New York from December 1981 to July 1987, [REDACTED] in Astoria, New York from July 1987 to January 1988, [REDACTED] in Astoria, New York from January 1988 to March 1988, and [REDACTED] from March 1988 to May 1990. At part #31 of the Form I-687 application where applicants were asked to list all absences from this country since January 1, 1982, the applicant listed one absence when he traveled to Brazil to visit relatives from January 1987 to March 18, 1987. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States dating back to January 1, 1982, the applicant listed unspecified employment in "Various Jobs" from January 1982 to August 1987, driver for [REDACTED] Restaurant in New York, New York from March 1987 to August 1987, truck driver for Fish Factory (Bask Industries, Inc.) in New York, New York from August 1987 to February 1988, driver for Reliant Parking Corp., in New York, New York from February 1988 to July 1994.

The applicant included the photocopied pages of his Brazilian passport which is numbered [REDACTED] with the Form I-687 application. The applicant's passport was issued at Belo Horizonte, Brazil on March 10, 1986 and contained a B-2 visitor's visa that was issued by the United States Consulate, in Rio De Janeiro, Brazil on April 10, 1986. The passport contained a stamp demonstrating that the applicant entered the United States at Miami, Florida utilizing the B-2 visitor's visa on March 18, 1987. In addition, the applicant provided contemporaneous documents, including paycheck stubs, tax documents, a postmarked envelope, and utility bills, that corroborate his claim of residence in the United States after his entry to this country on March 18, 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter containing the letterhead of SMA Limousine Service in Long Island City, New York that is signed by [REDACTED] who listed his position as owner. In his letter, [REDACTED] stated that the applicant worked for this enterprise (formerly [REDACTED]'s Limousine) performing a variety of duties on a part-time basis of between twenty-five and thirty hours a week from October 1981 to February 1987. However, [REDACTED] failed to provide the

applicant's address of residence during that period he was employed by SMA Limousine Service from October 1981 to February 1987 as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, Mr. Murta failed to attest to the applicant's residence in the United States after February 1987. Moreover, the applicant failed to list any employment with this enterprise at part #33 of the Form I-687 application where applicants were asked to list employment in the United States since January 1, 1982. The applicant failed to provide any explanation as to why his purported employment with SMA Limousine Service or its predecessor [REDACTED]'s Limousine was omitted from the listing of his employment on the Form I-687 application.

The applicant provided two affidavits signed by [REDACTED] and [REDACTED], respectively, who both indicated that they had knowledge that the applicant resided in the United States since 1982 as a result of their friendship with the applicant. However, both affiants failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States since 1982. In addition, neither [REDACTED] nor [REDACTED] attested to the applicant's residence in this country from prior to January 1, 1982 to that date each met the applicant in 1982.

The applicant included affidavits that are signed by [REDACTED] and [REDACTED] respectively. Both affiants stated that they met the applicant in 1981 and had knowledge that the applicant resided in the United States since such date. [REDACTED] and [REDACTED] each noted that he and the applicant had been friends since 1981 up through the present. While both affiants attested to the applicant's residence in this country since 1981, both [REDACTED] and [REDACTED] provided little relevant, verifiable information, such as, for example, the circumstances under which they and the applicant met, their frequency of contact with the applicant, or where the applicant lived and worked during the requisite period. The lack of detail is significant, considering that each affiant claims to have a friendship with the applicant spanning more than 20 years. The affidavits of [REDACTED] and [REDACTED] can only be afforded limited weight as corroborating evidence of the applicant's residence since 1981, due to the lack of detail of the testimony contained therein.

On January 23, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. The applicant was granted thirty days to respond to the notice.

In response, counsel and the applicant both submitted statements recounting the applicant's unsuccessful attempt to apply for legalization in 1987 and his subsequent filing for late legalization in 1991. Both the applicant and counsel asserted that these actions established the applicant's eligibility for class membership under the CSS/Newman Settlement Agreements.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982 through the date he entered the United States with a B-2 visitor's visa on March 18, 1987, and therefore, denied the application on March 21, 2006.

On appeal, counsel reiterates the applicant's claim of residence in this country during the requisite period. However, the applicant provided only affidavits containing testimony lacking sufficiently detailed and verifiable information to corroborate his claim of residence in the United States from prior to January 1, 1982 through March 18, 1987, the date he entered this country at Miami, Florida utilizing a B-2 visitor's visa.

The absence of sufficiently detailed and credible supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

An applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status was filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant testified that he traveled to Brazil to visit relatives from January 1987 to March 18, 1987 at part #31 of the Form I-687 application where applicants were asked to list all absences from this country since January 1, 1982. The applicant's admitted absence from this country in this period would constitute a minimum of forty-six days if the applicant departed the United States on January 31, 1987 and a maximum of seventy-six days if he departed on January 1,

1987. The applicant has claimed that he traveled to Brazil to visit relatives and failed to assert that he experienced any exigent circumstances that delayed his purported return to the United States on March 18, 1987. Therefore, any purported delay the applicant may have experienced in accomplishing the purposes of this trip cannot be considered to be due to an emergent reason within the meaning of 8 C.F.R. § 245a.2(h)(1). Even if the applicant had overcome that basis of the district director's denial relating to his failure to establish continuous unlawful residence in the United States during the requisite period, this admitted absence would have interrupted any period of continuous unlawful residence in this country that may have been established prior to the date that such absence began.

Given that the applicant's own testimony that he exceeded the forty-five day limit allowed for a single absence from this country in the period from January 1, 1982 to May 4, 1988, he has failed to establish having resided in continuous unlawful status in the United States for such period as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis as well.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.