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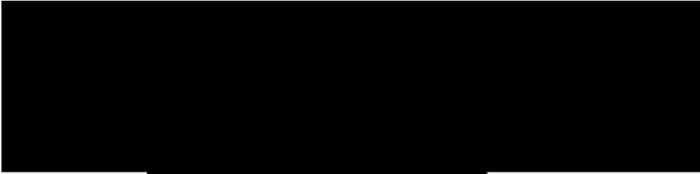
U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: [Redacted]  
MSC-05-323-10762

Office: NEW YORK

Date: JUL 08 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 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".

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 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, the applicant, through counsel, addresses the discrepancies cited in the director's denial notice.

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 his 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 on August 19, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from July 1981 until January 1990. Similarly, at part #33, he showed his first employment in the United States to be self-employed in newspaper sales in New York, New York from July 1981 until January 1990.

The applicant submitted the following documentation:

- An affidavit from [REDACTED], dated February 1, 2002. The affidavit provides, “I [REDACTED] . . . state that [REDACTED] is known to me since 1981. To my knowledge he has been living continuously in the United States since then . . . I had made his acquaintance in 1981, on [REDACTED] and [REDACTED] where he sold papers in the subway. Mr. [REDACTED] has delivered papers to my workplace, DeWitt Rehabilitation & Nursing Center since 1981.” This affidavit is ambiguous as to the time period and frequency of the applicant’s paper delivery. The affidavit also fails to specify the

name(s) of the newspaper(s) the applicant purportedly delivered. Moreover, the affidavit neglects to provide the address for the DeWitt Rehabilitation & Nursing Center. This information is necessary to corroborate that the center is located in the United States. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated February 1, 2002. This affidavit provides, "I Richard Leslie . . . state that [REDACTED] is known to me since 1981. Initially I bought daily newspapers from him in 1981, on [REDACTED] and [REDACTED] near the subway entrance. Afterwards [REDACTED] used to deliver newspapers to my apartment at the below address during 1981 for a couple of months. He collected his payments from me in the last week of each month." There is no indication in this affidavit that [REDACTED] had contact with the applicant subsequent to 1981. Accordingly, this affidavit only constitutes evidence of the applicant's residence in the United States in 1981.
- A copy of the applicant's Form I-687 application filed on March 7, 1990 for a determination of his class membership in *CSS v. Meese* or *LULAC v. INS*. This application is inconsistent with the applicant's instant Form I-687 application. The Form I-687 application filed on March 7, 1990 shows that the applicant was employed with the Maharaja Restaurant in Chicago, Illinois from September 1981 until November 1989. However, the instant Form I-687 application shows that the applicant was self-employed in newspaper sales in New York, New York from July 1981 until January 1990. These inconsistencies undermine the applicant's credibility as well as his claim of continuous residence in the United States during the requisite period.
- A copy of the applicant's Form I-697, Change of Address Card. The applicant's Form I-687 application is inconsistent with this card. The applicant filed the change of address card to change his address from [REDACTED], Palatine, Illinois to [REDACTED] Bronx, New York on July 12, 1990. However, the applicant's Form I-687 shows that he resided at [REDACTED] Bronx, New York from July 1981 until January 1990 and [REDACTED] Palatine, Illinois from January 1990 until March 1991. These inconsistencies again undermine the applicant's own credibility as well as his claim of continuous residence in the United States during the requisite period.
- A court disposition from the Criminal Court of the City of New York. The disposition shows that the applicant was charged with *Promoting Gambling in the Second Degree* in violation of § 225.05 of the New York Penal Law (Docket Number [REDACTED]). This crime is classified as a class A misdemeanor, which carries a sentence of imprisonment not exceeding one year. N.Y. Penal Law § 70.15 (McKinney 2004). The disposition shows that the applicant received an Adjournment in Contemplation of Dismissal with an order that his case would be dismissed on January 11, 2005 with the condition that he complete two days of community service.

On July 14, 2006, the director issued a Notice of Intent to Deny to the applicant. The director found that the applicant did not submit evidence of his entry into the United States in April 1981. The director found that the applicant did not file or attempt to file a Form I-687 application during the original legalization period of May 5, 1987 until May 4, 1988. The director determined that the applicant did not establish by a preponderance of the evidence his residence in the United States during the requisite period. The director noted that the applicant's evidence lacks probative value. The director determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact.

In rebuttal to the NOID, counsel submits a copy of the CSS Settlement Agreement and a copy of the applicant's affidavit for a determination of his class membership in *LULAC v. INS* or *CSS v. Meese*, dated March 6, 1990. Counsel asserts that the director's request for evidence of the applicant's entry into the United States is in violation of the CSS/Newman settlement agreements. Counsel states that the applicant has been consistent and credible on the issue of his previous attempt to apply for legalization. Lastly, counsel states that the director failed to provide proof of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or misrepresentation.

On September 11, 2006, the director issued a notice of denial to the applicant. In denying the application, the director found that the documents the submitted in rebuttal do not overcome the NOID. The director further determined that the applicant's Form I-687 is inconsistent with other documentation in his record. The director found that the applicant's instant Form I-687 states that from July 1981 until November 1989 he resided in Bronx, New York. However, his initial Form I-687 application, dated March 1, 1991<sup>1</sup>, states that from September 1981 until November 1989 and January 1990 until March 1991 he was employed in Chicago Illinois. The director also found that the applicant's Form G-325, Biographic Information Sheet, dated February 1, 2002, states that from April 1961 until May 1981 he resided in India. The director determined that the affidavits the applicant submitted are not corroborated by other evidence in the record nor are they credible. The director concluded that the applicant failed to submit credible documentation that constitutes by a preponderance of the evidence his residence in the United States during the requisite period. The director denied the application on this basis and for the reasons delineated in the NOID.

The director determined in her NOID that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willfully misrepresenting a material fact. However, the director failed to provide the basis for this finding. Therefore, the director's determination of inadmissibility, pursuant to Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), is withdrawn.

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<sup>1</sup> The record shows that the applicant filed his initial Form I-687 application for a determination of his class membership in *CSS v. Meese* or *LULAC v. INS* on March 7, 1990.

On appeal, counsel resubmits a copy of the CSS Settlement Agreement. Counsel asserts that the applicant has been consistent and credible on the issue of his previous attempt to apply for legalization. Although the director found that the applicant did not attempt to file a Form I-687 application during the original legalization application period, he treated the applicant as a class member and adjudicated the application for temporary residence on the merits. Therefore, the issue of class membership is not material to this proceeding.

Counsel states that the discrepancies between the applicant's two Form I-687 applications are immaterial. Counsel explains that on the instant Form I-687 the applicant rounded up the gap in dates of residence found in his initial Form I-687. Counsel states that the contradiction between the location of the applicant's residence and employment on his initial Form I-687 was due to an attorney's error. Counsel's assertions are unsupported statements that do not overcome the director's findings. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, there are other inconsistencies in the record that draw into question the applicant's claim of continuous residence in the United States during the requisite period. As discussed above, the applicant's Form I-687 application is inconsistent with his Form I-697, Change of Address Card. The applicant filed the change of address card to change his address from [REDACTED] Palatine, Illinois to [REDACTED] Bronx, New York on July 12, 1990. However, the applicant's Form I-687 shows that he resided at [REDACTED] Bronx, New York from July 1981 until January 1990 and [REDACTED] Palatine, Illinois from January 1990 until March 1991.

Counsel asserts that the director is in violation of the settlement agreements by denying the application because the affidavits submitted were not corroborated by other evidence in the record. Counsel states that the director failed to provide the basis for her determination that these affidavits are not credible. The applicant submitted as corroborating evidence two affidavits. The affidavit from [REDACTED] is of little probative value because it lacks considerable detail on the applicant's purported paper delivery during the requisite period. The affidavit from [REDACTED] is limited to [REDACTED]'s knowledge of the applicant's residence in the United States in 1981. Therefore, these affidavits are not probative evidence of the applicant's residence in the United States during the entire requisite period.

Finally, counsel concludes that the director failed to consider the totality of the evidence submitted. The applicant's record contains documentation that in totality is at best of little probative value. Moreover, the record shows inconsistencies in the location of the applicant's residence in the United States during the requisite period. These inconsistencies undermine the applicant's credibility as well as his claim of continuous residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and

contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.