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

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FILE: [Redacted]
MSC-05-175-12261

Office: NEW YORK

Date: **MAR 21 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 Records 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 "D. 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, 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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) dated April 7, 2006. 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 has made the following statement:

I would like your office to reconsider my case based on humanitarian justice. I am presently working with my papers and paying taxes. Stopping [sic] the documentation would lead to a psychological impact on the life my well being with all due respect I appeal to your office.

Although the applicant stated that a written brief or statement was attached to the appeal form, none were attached.

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.

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 March 24, 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 showed his first address in the United States to be at [REDACTED] Bronx, New York from 1987 to 1994. Similarly, at part #33, he showed his first employment in the United States to be in self-employment as a vendor on [REDACTED] New York, New York from 1987 to 1994.

The applicant submitted the following documentation:

- An affidavit made December 21, 2005, from [REDACTED] of [REDACTED], New York, New York who stated that she knew the applicant personally because “she lives at my cousin’s building since 1981 and that’s where I got acquainted with her.” There is no

explanation why the affiant is referring to the applicant in the feminine gender. There is no proof that the affiant was in the United States during the requisite period, no explanation and proof of the relationship between the affiant and the applicant, or a telephone number at which the affiant may be contacted. [REDACTED] had not stated how frequently she had contact with the applicant. Based upon the applicant's statement of residence found in the I-687 application, the applicant resided at [REDACTED] Bronx, New York from 1987 to 1994, and after a seven year gap in time, at [REDACTED] Bronx, New York from 2001 to present (August 2, 2006). [REDACTED] affirmation that the applicant resided at her "cousin's building since 1981" is not supported by the applicant's statement of residence in the United States beginning in 1987, not in 1981, at two the residences above-mentioned.

- A notarized declaration made April 19, 2006, from [REDACTED] of [REDACTED] Bronx, New York, who stated that she had known the applicant for 20 years (i.e. from 1986). She then stated in the declaration that she dated her acquaintance with the applicant from January 1981 from a family reunion held in [REDACTED]. No proof was provided by the affiant that she was in the United States during the requisite period, or an explanation and proof of the relationship between the affiant and the applicant. The affidavit is inconsistent since [REDACTED] stated that she had known the applicant from 1986 but dated her first contact with him from 1981.

The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning over two decades. For these reasons, all of these declarations have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

According to sworn testimony provided by the applicant to an CIS Immigration Officer on March 21, 2006, he entered the United States through Canada but said he could not remember the year and that he first resided on "[REDACTED]" in 1987. The applicant was married in his home country of Gambia in 1990 and had two children born there in 1992 and in 1994 or 1996.

The director denied the application for temporary residence on August 2, 2006. In denying the application, the director found that the statement made in the I-687 application that he entered the United States in 1981 was not supported by applicant's testimony that he first resided in the United States in 2001, or as the applicant stated in the form I-687 application, in 1987. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period before January 1, 1982 except for his own admittedly inconsistent assertions and the affidavits noted above. The affidavits above noted lack credibility and probative value for the reasons noted.

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 he 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.