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

PUBLIC COPY

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[REDACTED]

FILE:

MSC-05-223-11223

Office: NEW YORK Date:

MAR 24 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 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.

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 overcome the reasons for denial specified in the Notice of Intent to Deny (NOID). Specifically, the applicant did not establish by a preponderance of the evidence that he is eligible for temporary resident status.

On appeal, the applicant stated that he gave thorough and complete testimony in support of his application, he provided affidavits that are credible and amenable to verification, and the director failed to give adequate consideration to the submitted evidence.

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 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 May 11, 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 only the following address during the requisite period: [REDACTED], New York, New York from April 1981 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. Several of these attestations fail to confirm that the applicant resided in the United States during the requisite period. These include affidavits from [REDACTED] and [REDACTED]

The applicant provided an affidavit from [REDACTED], which states that the affiant met the applicant in 1981 in Astoria, and that he saw the applicant every Friday and at traditional occasions. Since the affiant did not indicate when he stopped seeing the applicant regularly, whether they were always in the United States when they met every Friday, and whether the affiant continues to see the applicant regularly in the United States, this affidavit is found not to specifically confirm that the applicant resided in the United States throughout the requisite period. This affidavit also fails to

provide detail regarding how the affiant met the applicant, and the region where the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated April 29, 2005. The affidavit states that, to the affiant's personal knowledge, the applicant has resided in the United States at the address from April 1981 to present. This affidavit fails to provide detail regarding when and how the affiant met the applicant, and their frequency of contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] which states that the applicant has been personally known to the affiant since 1981. The affidavit also contains the statement, "Therefore I recommend [the applicant's] presence in the United States of America since 1981." Since the meaning of this statement is unclear, this affidavit fails to specifically confirm that the applicant resided in the United States during the requisite period. This affidavit also fails to provide detail regarding how the affiant met the applicant, the region where the applicant resided, and their frequency of contact during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that he has known the applicant since 1981. The affiant stated that he met the applicant in New York, and that the applicant resided at [REDACTED]. The year during which the applicant resided at that address appears to have been altered on the affidavit and is illegible. This affidavit fails to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant did not establish by a preponderance of the evidence that he is eligible for temporary resident status.

On appeal, the applicant stated that he gave thorough and complete testimony in support of his application, he provided affidavits that are credible and amenable to verification, and the director failed to give adequate consideration to the submitted evidence.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that fail to confirm that the applicant resided in the United States or lack sufficient detail. The affidavits from [REDACTED]

[REDACTED] and [REDACTED] fail to confirm that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] lacks 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 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 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.