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**U.S. Citizenship
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[Redacted]

FILE: [Redacted]
MSC 06 090 11043

Office: LOS ANGELES

Date: **MAY 27 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 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.

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, Los Angeles, and 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, the applicant asserts he has lived in the United States since prior to January 1, 1982. He attempts to account for the contradictions in his previously furnished 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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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.* 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 during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687 in 1991 and subsequently filed a Form I-485 seeking permanent resident status under the Legal Immigration Family Equity (LIFE) Act. In support of his claimed continuous residence in the United States during the relevant time period, the applicant submitted the following documents:

1. An affidavit dated December 24, 1990 from [REDACTED] claiming that she had known the applicant since 1981. The affiant stated that at the time she wrote the affidavit she was residing at [REDACTED], San Fernando, California and claimed that the applicant had resided at the same address from August 1981 until July 1987. However, the affiant did not state how long she had been residing at that address or how she came to know the applicant. The affiant also failed to provide any details about the applicant's purported residence in the United States during the relevant time period.
2. A photocopied rent receipt dated July 1987 showing the applicant's payment for the one-month period from July 15, 1987 to August 15, 1987 for his residence at [REDACTED] San Fernando, California.
3. Two photocopied checks made out to the applicant by [REDACTED]s. The check dated May 1, 1987 is the only one that addresses the issue of the applicant's presence in the United States during the statutory period.
4. An affidavit dated August 30, 2003 from [REDACTED] claiming that she had known the applicant since 1981 and that the applicant had worked for her from 1981 through 1985.

It is noted, however, that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) sets forth specific guidelines with regard to employment verification letters. The requirements include the alien's address at the time of employment; the exact period of employment; the alien's duties with the company; and whether the information was taken from official company records, and if so, the location of those records. In the present matter, [REDACTED]'s affidavit failed to meet these specific criteria.

5. An affidavit dated August 3, 2003 from [REDACTED] who claimed that he first met the applicant in 1984 at church and further stated that the applicant worked for him as a gardener for ten years. It is noted that the affiant failed to name the church where he first met the applicant and did not meet any of the criteria set forth in 8 C.F.R. § 245a.2(d)(3)(i) with regard to employment verification.
6. An affidavit dated September 29, 2004 from [REDACTED] who claimed that she had known the applicant since 1985 and stated that she and the applicant are members of the same church. It is noted however, that when asked to name his affiliation or association with any clubs, organizations, churches, etc., the applicant's response in No. 31 of his recently filed Form I-687 was "none." Thus, this affiant's claim is inconsistent with the information provided by the applicant.
7. An affidavit dated September 30, 2004 from [REDACTED] who claimed to have known the applicant since May 31, 1983. It is noted that this affiant provided no details that would lend credibility to her alleged 21-year relationship with the applicant. As such, her statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.
8. An affidavit dated October 1, 2004 from [REDACTED] who claimed that she had known the applicant since 1981. The affiant further stated that the applicant has been cutting her grass. However, she did not clarify how she first met the applicant and when he allegedly started cutting her grass. If this affiant meant to submit verification of the applicant's employment, her affidavit failed to meet the guidelines specified in 8 C.F.R. § 245a.2(d)(3)(i). This affidavit also lacks any details or information about the applicant during the relevant time period. For these reasons [REDACTED]'s statement will be afforded minimal evidentiary weight.
9. An affidavit dated October 2, 2004 from [REDACTED] who claimed to have known the applicant since March 10, 1982. It is noted that this affiant provided no details that would lend credibility to his alleged 22-year relationship with the applicant. As such, his statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time period.

After comprehensively reviewing the documentation submitted in support of his claim, the director issued a denial of the application on September 9, 2006, determining that the documentation was insufficient to

establish the applicant's residence in the United States during the relevant time period. The above analysis suggests that the director's findings were warranted.

On appeal, the applicant provides the following additional evidence pertaining to his residence in the United States during the relevant time period:

1. Two affidavits dated September 29, 2006 from [REDACTED] and [REDACTED], respectively. Both affiants claimed to have met the applicant in September 1981. [REDACTED] claimed that she met the applicant at a reunion and stated that the applicant has resided in San Fernando, California since then. [REDACTED] claimed that he met the applicant at Sunday mass, which he attended at the Santa Rosa Catholic Church in San Fernando, California. Neither affiant provided any details about the events and circumstances of the applicant's purported residence in the United States during the statutory period.
2. Four affidavits dated October 1, 2006 from [REDACTED] who claimed that she had known the applicant since October 1981 when she met him at Sunday mass at the Santa Rosa Catholic Church; [REDACTED] who claimed that she met the applicant in November 1981 through personal acquaintances and stated that the applicant has resided in San Fernando, California since she has known him; [REDACTED], who claimed that he met the applicant in November 1981 through his sister-in-law at a gathering; and [REDACTED], who claimed that she met the applicant in December 1981 at a bus stop near her residence, stating that the applicant was out looking for work. While each affiant claimed to have had a 25-year relationship with the applicant, none provided any details about the applicant's life in the United States that would lend credibility to their respective claims.

In summary, the applicant has provided minimal contemporaneous evidence, which, at best, establishes his presence in the United States as of May 1987. While the applicant also provided numerous affidavits from affiants who attested to the applicant's residence since prior to the commencement of the statutory period, the affidavits lacked sufficient verifiable information to meet the applicant's burden of proof. 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. Moreover, numerous affiants claimed to have met the applicant at Santa Rosa Catholic Church. However, the applicant's claim that he had no affiliation with any church or other organization makes these affiants' claims inconsistent with that of the applicant. Thus, 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 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.*