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U.S. Citizenship  
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LI

FILE:

MSC-05-095-10573

Office: NEW YORK

Date: NOV 12 2008

IN RE:

Applicant:

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:

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 director of the New York office. 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 denied the application because the applicant had failed to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). In the NOID, 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 found 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. The director noted that the applicant had made prior statements indicating that he was absent from the United States throughout the requisite period. The director also raised concerns regarding contact information provided by the applicant's declarants.

On appeal, the applicant states that he resided in the United States from 1980 through the end of the requisite period. He attempts to explain his prior statements that appear to contradict his claim of eligibility for temporary resident status. The applicant provides additional attestations in an attempt to establish that he resided in the United States during the requisite period.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on January 3, 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 December 1980 to June 1986; and [REDACTED], New York, New York from July 1986 to July 1988. At part #33 where applicants were asked to list all employment in the United States, the applicant indicated that he was a self-employed vendor on [REDACTED] in New York from November 1981 to November 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The affidavit from [REDACTED] dated January 11, 2006 states that the affiant knew the applicant as a street vendor on [REDACTED] in New York from 1981 to 1988. The affiant stated that his parents bought art from the applicant many times “all a long [sic] [t]hat period . . .” This affidavit lacks detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and whether the affiant’s knowledge of the applicant’s residence in the United States is first-hand. Therefore, this affidavit will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] dated February 21, 2006 states that the declarant confirms the affidavit he made on January 11, 2006 saying that he personally knows the applicant and he can “vouch for” the applicant’s residence in the United States from “1980 to 19885.” In response to a concern raised by the director in the NOID, the declarant stated that the corporation using his voice mail is his own company and that it is unlikely any message had been left on his voice mail. The meaning of the declarant’s statement regarding the applicant’s dates of residence in the United States is unclear. In addition, this declaration lacks detail regarding when and how the declarant met the applicant, their frequency of contact during the requisite period, and whether the declarant’s knowledge of the applicant’s residence in the United States is first-hand. Therefore, this declaration will also be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

**The notarized declaration from [REDACTED] dated July 14, 2004 states that the declarant has known the applicant since 1980. The declarant stated that he personally knows the applicant and can “vouch for” his residence in the United States from 1980 to 1985. He stated that the applicant was a street vendor mostly downtown and particularly at 14<sup>th</sup> Street and 7<sup>th</sup> Avenue from 1980 to 1985. This is inconsistent with the applicant’s Form I-687, where he indicated that he was a street vendor on [REDACTED]. This inconsistency casts doubt on the declarant’s ability to confirm that the applicant resided in the United States during the requisite period.**

The declaration from [REDACTED] dated February 20, 2006 confirms the attestation made on July 14, 2004. In addition, the declaration states that the declarant knew and could “vouch for” the applicant’s residence in the United States from 1980 to 1985. The declarant also responded to concerns raised by the director in the NOID by stating that he does not have a telephone. This declaration lacks detail regarding when and how the declarant met the applicant, their frequency of contact during the requisite period, and the region where the applicant resided during the

requisite period. As a result, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] dated October 10, 2006 states that the declarant reconfirms two earlier attestations that he made on behalf of the applicant. The declarant stated that he used to sometimes share a table with the applicant at a restaurant at 14<sup>th</sup> Street and 7<sup>th</sup> Avenue from “1980 to 1889.” The declarant stated that he often visited the applicant at his hotel and he can “vouch for” the applicant’s residence in the United States since 1980. The meaning of the declarant’s statement regarding dates when he would meet the applicant at the restaurant is unclear. In addition, this declaration appears inconsistent with the declarant’s prior attestation, where he indicated that the applicant was a vendor on 14<sup>th</sup> Street and 7<sup>th</sup> Avenue, rather than that he and the applicant met at a restaurant there. This declaration also lacks detail regarding when, where, and how the declarant met the applicant, and their frequency of contact during the requisite period. Therefore, this declaration will be given only minimal weight.

An affidavit from [REDACTED] dated October 10, 2006 states that the applicant was a street vendor depending on the season at 14<sup>th</sup> Street and 7<sup>th</sup> Avenue from winter 1980/1981 to 1989. The affiant stated that he personally knows the applicant and can “vouch for” his residence in New York from 1980 to 1989. The affiant also stated that “sometimes” he visited the applicant at the [REDACTED] address where he lived from 1980 to 1986 until he moved to [REDACTED]. Again, this affidavit is inconsistent with the information provided on the applicant’s Form I-687, where he failed to indicate that he was a street vendor on 14<sup>th</sup> Street and 7<sup>th</sup> Avenue. This inconsistency calls into question the affiant’s ability to confirm that the applicant resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the affiant has known the applicant since July 1986. The affiant stated that the applicant lived with him from July 1986 to July 1988 at the [REDACTED] address. This affidavit lacks detail regarding how and where the affiant met the applicant and how they came to be living together. As a result, this affidavit will be given only minimal weight in establishing that the applicant resided in the United States from July 1986 to July 1988.

The notarized declaration dated October 18, 2006 from [REDACTED] states that the declarant has known the applicant since 1981 and can “vouch of [sic]” his residence in New York from 1981 to 1988. The declarant stated that he and the applicant are still keeping in touch. This declaration lacks detail regarding where and how the declarant met the applicant, and the nature and frequency of their contact during the requisite period. Therefore, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The record also includes a Form I-589 Application for Asylum signed by the applicant on August 11, 1994 under penalty of perjury. At part #12 of his Form I-589, the applicant indicated that he arrived in the United States on June 7, 1993. At part#24 the applicant indicated that he

had not traveled to the United States before. The fact that the applicant indicated on Form I-589 that he had never traveled to the United States before June 7, 1993 casts serious doubt on his current claim to have resided in the United States throughout the requisite period. The applicant provided a Biographic Information Form G-325A, signed under severe legal penalties for knowingly and willfully falsifying or concealing a material fact, which he submitted with the Form I-589. The applicant indicated on the Form G-325A that his last address outside of the United States of more than one year was in Senegal from October 1976 to June 1993. The applicant also provided the Senegal address and dates of residence when asked to list his residence for the last five years. Again, these statements cast serious doubts on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the Form I-687 application, the director found that the applicant had failed to overcome the grounds for denial expressed in the NOID. In the NOID, 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 found 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. The director noted that the applicant had made prior statements indicating that he was absent from the United States throughout the requisite period. The director also raised concerns regarding contact information provided by the applicant's declarants. Specifically, the applicant had indicated on Form I-589 and Form G-325A that he did not begin residing in the United States prior to June 1993.

On appeal, the applicant states that he resided in the United States from 1980 through the end of the requisite period. He attempts to explain his prior statements that appear to contradict his claim of eligibility for temporary resident status. Specifically, the applicant stated that he withdrew his asylum application as soon as he found out that the information he gave to the preparer was completely different from what he put on the application. This explanation is found to be unreasonable, considering that the applicant signed the Form I-589 under penalty of perjury and provided similar information on the Form G-325A, which he also signed. In addition, the applicant has failed to provide independent, objective evidence to substantiate his explanation of the inconsistencies in the record. The applicant also provides additional attestations in an attempt to establish that he resided in the United States during the requisite period.

In summary, the applicant has provided evidence of residence in the United States during the requisite period that is inconsistent with his statements on the Form I-687 application or lacks sufficient detail. In addition, the record contains documents submitted by the applicant that directly conflict with his claim of continuous residence throughout the requisite period and with other documents he submitted. The inconsistencies in the record tend to show that the applicant used documents in a fraudulent manner and made material representations. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used documents in a fraudulent manner and made material misrepresentations seriously undermine the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal or no probative value or that have been found to be fraudulent, 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 May 4, 1988 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.

The applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, the evidence that he submitted falsified documents. Therefore, we find that, by filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact.

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