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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 066 10018

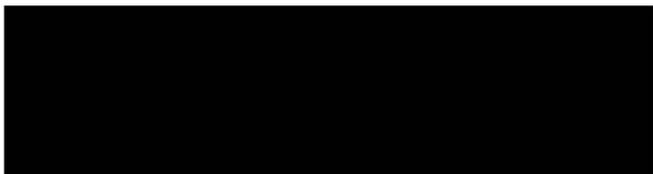
Office: NEW YORK

Date: **NOV 14 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:



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.

John F. Grissom, Acting 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, 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 on December 5, 2004. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On September 22, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant failed to prove eligibility for temporary residence under section 245A of the Act. In response to the NOID, the applicant submitted affidavits from [REDACTED] and [REDACTED]. The director denied the application, finding 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.

On appeal, counsel asserts that the applicant provided three affidavits and a letter from his employer to support his claim. Counsel states that the applicant provided sufficient evidence to warrant a favorable decision.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in New York from December 1981 to September 1984. He indicated at part 33 of his Form I-687 application that he worked for Churches Fried Chicken in New York as a cook/cashier from March 1982 to April 1986. The Form I-687 application at part 32 lists three absences from the United States for the applicant since his initial entry with no single absence exceeding 45 days and the aggregate of all absences not exceeding 180 days.

In an attempt to establish entry into the United States before January 1, 1982 and continuous unlawful residence in the United States, counsel provided multiple documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period. In the instant case, those documents are affidavits from [REDACTED] and [REDACTED]

In his affidavits dated May 19, 2003, [REDACTED] who is also the president of Howard Construction Corporation where the applicant was employed, states that he knew the applicant since 1981. In a subsequent

affidavit dated August 19, 2003 he states that he has known the applicant since December 1981 and that the applicant was in the United States from January 1, 1982 to March 4, 1988. In his affidavit dated October 17, 2006 the affiant states that the applicant was in the United States in January 1982, left for Pakistan on June 26, 1987 and returned to the United States on July 28, 1987. The affidavits have neither confirmed the applicant's continuous residency nor entry into the United States before January 1, 1982.

The affidavits from [REDACTED] dated October 17, 2006 state that the affiant has been living in the United States since 1981. In review, the AAO finds that the year has been changed to 1981. Counsel states that the affiant made the corrections changing the year he began residing in the United States from 1980 to 1981. The AAO accepts counsel's explanation of the alterations. The affidavits however do not contain sufficient detail about the claimed relationship with the applicant to establish the truth of the assertions.

Other affidavits were executed by [REDACTED], and the applicant's brother, [REDACTED]. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's unlawful residency in the United States since December 1981. The affidavits fail to explain how the affiant and the applicant developed and maintained a friendship. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits do not contain pertinent knowledge regarding the applicant's date of entry into the United States. The affidavits fail to establish the applicant's continuous residence in the United States for the duration of the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits do not contain sufficient detail to establish the credibility of the assertions. Therefore, they have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of details and the inconsistencies that exist in the above noted evidence call into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affiant's affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.