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[REDACTED]

FILE: [REDACTED] MSC-06-068-11435

Office: NEW YORK

Date: **SEP 15 2008**

IN RE: Applicant: [REDACTED]

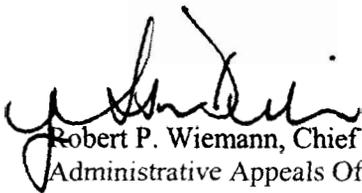
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 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, 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. 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, counsel addresses the basis for the director's denial and furnishes additional 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).

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) 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 December 7, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Flushing, New York from September 1981 until June 2000. At part #33, where applicants are asked to show their employment in the United States since entry, the applicant showed that he has been self-employed in Queens, New York in the position of construction since September 1981.

On January 11, 2006, the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded 30 days to submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions

or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a fill-in-the-blank form affidavit from [REDACTED] dated January 17, 2005. This affidavit in pertinent part provides that [REDACTED] has personal knowledge of the applicant's residence in Flushing, New York from September 1981 until June 2000. The affidavit states that the applicant and his wife resided with [REDACTED] from September 1981 until June 2000. The affidavit indicates that [REDACTED] has seen the applicant on a daily basis since September 1981 until the present date. This affidavit lacks significant detail on [REDACTED]'s relationship with the applicant. It does not establish how and where he first met the applicant. Furthermore, it fails to detail their living arrangement/agreement during the requisite period. Notably, the affidavit does not provide the street address of where they purportedly resided together. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The record reveals that the applicant submitted a second affidavit from [REDACTED], dated March 15, 2006, as additional corroborating evidence. This affidavit in pertinent part provides:

[REDACTED] and her husband [REDACTED] came to reside with us at [REDACTED], Flushing, New York 11354 from September of 1981 to June 2000. They paid the rent in cash all the times and the rent included electric, heat and water. They rented a room from us all these years having access to all the comodities [sic] in the apartment. I never gave them a receipt for the rent and they never asked for one. In good faith they paid the rent and never caused any troubles for me or my wife during all these years. I find them to be very nice and respectful persons [sic] always.

Although this affidavit illustrates [REDACTED]'s living arrangement with the applicant, it remains deficient in several respects. This affidavit fails to establish how and where [REDACTED] first met the applicant. The affidavit indicates that [REDACTED] does not have any record of the applicant's residence at his home in Flushing, New York. However, it does not provide any documentation of [REDACTED] own residence at this address during the requisite period. [REDACTED] assertions would have been given more weight had he provided some documentation of his residence at this address during the requisite period. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On July 17, 2007, the District Director, New York, issued a denial notice to the applicant. The director stated that an adjudication officer contacted [REDACTED] via telephone. The director

noted that [REDACTED] indicated that he does not know a [REDACTED] or an [REDACTED]. The director determined that based upon this contradiction, the two affidavits from [REDACTED] are not credible. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, counsel furnishes a third affidavit from [REDACTED]. Counsel asserts that [REDACTED] has declared under oath that the applicant and the applicant's wife have resided with him for 19 years. Counsel notes that [REDACTED] has provided a copy of his New York State Driver License.

The affidavit from [REDACTED] dated August 1, 2007, in pertinent part provides:

I reside at [REDACTED] Flushing, New York, 11354. I personally know Mr. [REDACTED] since 1981 as residing in the United States since 1981. He resided with me for nearly 19 years. His wife resided with us as well. Her name is [REDACTED].

Mr. [REDACTED] showed me the letter he received from the US Citizenship and Immigration Services. The letter states that the US CIS called me and I denied the fact that I know [REDACTED]. That I only know a "[REDACTED]". And that I do not know a [REDACTED] as well. Firstly I want to mention that I do not recall having spoken to an Immigration Officer two weeks ago, about [REDACTED].

Second, how could I forget the names of two people that resided at my place of residence for nearly nineteen years? I am willing to testify in person on behalf of Mr. [REDACTED] and [sic] wife as I know them as residing in the United States since before January 1, 1982 up to this present date. . . .

Although this affidavit addresses the basis for the director's denial, it does not offer any other details to establish [REDACTED]'s relationship with the applicant in the United States during the requisite period. This affidavit fails to establish how and where [REDACTED] first met the applicant. Furthermore, it does not offer any evidence to establish [REDACTED]'s own residence during the requisite period at [REDACTED], Flushing, New York.<sup>1</sup> Since this affidavit does not offer any additional details to corroborate [REDACTED]'s assertions, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of

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<sup>1</sup> [REDACTED] furnished a copy of his New York State Driver License. This document shows [REDACTED] Flushing, New York as his residential address. However, the document was issued outside the requisite period on August 25, 2004.

evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, three affidavits from [REDACTED]. As noted, these affidavits collectively are of little probative value as evidence of the applicant's residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is of little probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.