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U.S. Citizenship  
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[REDACTED]

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FILE: [REDACTED]  
MSC-05-309-11614

Office: HOUSTON

Date: **SEP 23 2009**

IN RE: Applicant: [REDACTED]

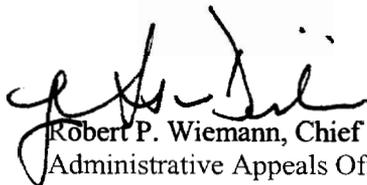
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, Houston. 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 asserts that the applicant meets his burden of proof to establish that he is eligible for adjustment as a temporary resident.

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 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. See 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 August 5, 2005. On his Form I-687 application at part #30 where the applicant was asked to list his places of residence he indicated that he resided at [REDACTED] Texas from December of 1979 to January of 1985; at [REDACTED] Texas from January of 1985 to October of 1986; and at [REDACTED] Texas from October of 1986 to January of 1992.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestations:

- An undated declaration from [REDACTED] in which he stated that he has known the applicant and that the applicant has lived with him at [REDACTED] from 1979 to 1992. This statement is inconsistent with what the applicant indicated on his Form I-687 application in that he stated that he lived at the Winona address from January of 1985 to October of 1986. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period.

Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made.

- An affidavit from [REDACTED] dated April 10, 2000 in which she stated that she has known the applicant since 1979 and that she met him when her sister married his half-brother. She further stated that the applicant is a member of her church and that she sees him at least once a week. This affidavit is inconsistent with the information provided by the applicant on his Form I-687 application, where, when asked in part #31 to list all of his affiliations or associations with churches in the United States, he did not indicate any. The inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. It is also noted by the AAO that the affiant fails to indicate what church she attended and when the applicant became a member of such church. The affiant also fails to indicate the frequency with which she saw and communicated with the applicant before he became a member of her church. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, and because it is lacking in detail, doubt is cast on the assertions made.
- An affidavit from [REDACTED] dated April 1, 2002 in which she stated that she has known that the applicant and that he has resided in the United States since 1980. Here, the applicant has failed to indicate the frequency with which she saw and communicated with the applicant during the requisite period. She has also failed to indicate that she knew of the applicant's place of residence during that period.
- An affidavit from [REDACTED] dated April 1, 2002 in which she stated that she has known the applicant and that he has resided in the United States since 1980. Here, the applicant has failed to indicate the frequency with which she saw and communicated with the applicant during the requisite period. She has also failed to indicate that she knew of the applicant's place of residence during that period.

In denying the application the director noted that the affidavits submitted were from the applicant's relatives and where therefore of limited probative value. The director also noted that the applicant had failed to provide the preponderance of evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, counsel states that although the director concluded in the decision that the affidavits from the applicant's relatives were of limited probative value, he was submitting affidavits from non-relatives on appeal and as such, they should have more probative value.

The applicant submitted the following attestations as evidence:

- An affidavit from [REDACTED] dated January 23, 2007 in which she states that she has known the applicant since 1979 when he lived in a duplex with some of his

uncles, and that she and her husband lived in a neighboring duplex. Here, the affiant fails to indicate the addresses where she and the applicant lived and she also fails to specify the dates of his residency. She also fails to indicate the frequency with which she saw and communicated with the applicant during the requisite period.

- An affidavit from \_\_\_\_\_ dated January 20, 2007 in which he states that he first met the applicant in 1979 at a time when they were both looking for a job. The affiant also states that after some years they lost contact with each other, but that they met up again. The affiant fails to specify the length of time during which he had no communication with the applicant and therefore, his statement can be given only minimum weight in establishing the applicant's residence in the United States since before January 1, 1982.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The attestations, while providing some evidence of the applicant's presence in the United States, are insufficient to establish his continuous unlawful residence in the country throughout the requisite period.

The absence of sufficiently detailed 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 affidavits that conflict with his statements and that are lacking in detail, with little 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