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FILE: [REDACTED]  
MSC-05-256-10924

Office: NEW YORK

Date: APR 24 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). In adjudicating the application, the director found that the evidence submitted was not credible to sustain the applicant's claim of continuous residence in the United States since before January 1, 1982. Further, the director determined that the applicant was ineligible for the benefit sought since he had never been "front- desked."

On appeal, the applicant asserts in a signed statement that he initially filed the legalization application in 1987, but that application was rejected due to his claimed trip outside the United States from August 7, 1987 to September 6, 1987. He further submits an additional affidavit from a friend. On appeal, counsel for the applicant states that the evidence submitted is credible and sufficient to support the applicant's claim of continuous residence in the United States throughout the requisite period and indicates that the applicant was front-desked as he attempted to file the application for legalization in 1987.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 applicant 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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 director stated in her decision that the applicant was ineligible for temporary resident status since he had never been front-desked during the original legalization period between May 5, 1987 and May 4, 1988. On appeal, counsel for the applicant asserts that the applicant was front-desked when he was discouraged from filing the application in 1987. Upon a *de novo* review, the AAO finds that although the director found that the applicant had never been front-desked, the director adjudicated the Form I-687 application on its merits, thereby treating the applicant as a class member. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had never been front-desked.

The AAO notes further that the approval of the applicant's CSS/Newman class membership does not necessitate the approval of the applicant's Form I-687. As indicated above, the applicant has the burden of proving by a preponderance of the evidence that he resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The issue here is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982, and continuously resided in the United States throughout the requisite period.

To prove that his residence in the United States was continuous throughout the requisite period, the applicant submitted five affidavits, three employment letters, and four unsigned declarations. [REDACTED] and [REDACTED] in their letters claim that the applicant has been working for [REDACTED] since May 1986. [REDACTED] in her declaration states that she has been working together with the applicant at [REDACTED] since May 1986. [REDACTED] in his declaration indicates that he was the applicant's manager at [REDACTED] between 1987 and 1989. Together, the documentation presented above is credible and probative to establish the applicant's continuous residence in the United States since May 1986.

[REDACTED] and [REDACTED] in their sworn statements claim that they have been good friends of the applicant since 1981. Both [REDACTED] and [REDACTED] in their affidavits indicate that their friendships with the applicant began in 1986. However, the affiants provide no information about how they first met the applicant in the United States in 1981 or 1986. They also provide no explanation how their relationships with the applicant were developed or state with specificity where he resided in the United States during the requisite period. Thus, their assertions are not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period.

Further detracting from the credibility of [REDACTED] is his statement that he has known the applicant since 1981. In an unsigned declaration, [REDACTED] states that he first met the applicant in December 1982. The inconsistency coupled with the lack of detail in [REDACTED] affidavit casts doubt on the veracity of his statement that he has known the applicant since 1981.

[REDACTED] in his affidavit claims that the applicant was his tenant from September 1981 to November 1989. No further information about the applicant's residence during this period is provided. The affiant also fails to submit corroborating documents to establish the credibility of his claim. Since the affidavit lacks detailed information about the applicant's residence in the United States and is not accompanied by corroborating documents, it has minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

The letter from [REDACTED] states that the applicant worked as a dishwasher and a busboy from September 1981 to April 1986. Further, the author claims that the applicant was paid cash during his employment with the company and that the company did not keep any official records. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides specific guidelines that an author of an employment letter must follow. Specifically, the author must state the exact period of the applicant's employment with the company, the address or addresses of the applicant during his employment, the applicant's duties with the company, whether or not the information was taken from official company records, where such records are located, and whether USCIS

may have access to the records. Here, the author of the letter fails to state the inclusive date of the applicant's employment and his specific address or addresses during the employment. The author also fails to explain how he dated the applicant's employment with the company from September 1981 to April 1986. The letter from [REDACTED] is not probative as evidence of the applicant's residence in the United States during the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the noted inconsistencies, and the lack of detail in the record detract 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 the applicant 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.