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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

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FILE:

[REDACTED]  
MSC-06-035-10710

Office: NEW YORK

Date:

**JAN 26 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.

[Handwritten signature]

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 and 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States for the duration of the requisite period. The director noted that the affidavits submitted were not credible or amenable to verification. 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 director failed to consider all of the evidence in the record and therefore, erred in her decision. Counsel also asserts that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident status.

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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 United States Citizenship and Immigration Services (USCIS) on November 4, 2005.

The applicant submitted the following affidavits:

Affidavits dated May 17, 2006 and June 4, 2007 from [REDACTED] in which he stated that the applicant is his cousin and that he met him on Thanksgiving Day in November of

1983 at his father's home in Chicago, Illinois. He further stated that he and the applicant became good friends and that the applicant would stay with him and his father when he visited Chicago in 1984, 1985, 1986, and 1987. He also stated that he and the applicant would call each other every week, and that the applicant continued to stay with his father whenever he visited Chicago thereafter, until 1998. Here, the affiant fails to demonstrate first-hand knowledge of the applicant's entry into the United States or his whereabouts and circumstances of his residency during the requisite period. It is further noted that although the statement is some evidence of the applicant's presence in the United States since November 1983, it is insufficient to establish the applicant's continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period.

- Affidavits dated December 21, 2005 and June 5, 2007 from [REDACTED] in which he stated that the applicant is his cousin and that he met the applicant in the United States in September of 1981 when the affiant was stationed at Fort Bragg. The affiant further stated that he and the applicant have kept in touch with each other and that the applicant comes to visit him and his family two to three times a year. The affiant fails to demonstrate first-hand knowledge of the applicant's entry into, whereabouts and circumstances of his residency in the United States during the requisite period. The affiant stated that he was stationed in Germany after 1987, and did not return to the United States until 1993. He fails to specify the frequency with which he communicated with the applicant during his absence from the United States or the applicant's place of residence during the requisite period. Because the affidavits are lacking in detail, they can be accorded little weight in establishing the applicant's residence in the United States since prior to January 1, 1982 and throughout the requisite period.
- Affidavits dated December 20, 2005 and June 5, 2007 from [REDACTED] in which he stated that he first met the applicant in 1981 at a Christmas party organized by the Amaniampong Social Club. The affiant stated that the applicant became a member of the social club in 1984. He further stated that he and the applicant continue to communicate with each other every few weeks and whenever the applicant is in Chicago. The affiant stated that the photograph submitted as evidence was taken at his daughter's third birthday party in 1989. However, this is subsequent to the requisite period and therefore, irrelevant to the applicant's claimed residence during the requisite period. The affiant fails to specify the applicant's place of residence during the requisite period or any first-hand knowledge of the applicant's initial entry into the United States. In addition, the affiant's statement regarding the applicant's membership in the social club is inconsistent with what the applicant stated on his Form I-687 application at part #31, where he failed to list any affiliations or associations with any organizations. This inconsistency calls into question the credibility of the affiant's statement.
- A letter from the [REDACTED] secretary in which he stated that the applicant has been a member in good standing of the club since

November 1984. Here, the declarant's statement is inconsistent with what the applicant stated on his Form I-687 application at part #31, where he was asked to list his affiliation and associations with all social and religious groups or organizations; and he failed to indicate any affiliation or membership.

In denying the application the director noted that the affidavits submitted were not credible or amenable to verification.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary residence status.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the issues raised by the director. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the affidavits submitted. The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to his club membership. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 documents that are lacking in detail and are inconsistent with his statements made on his Form I-687 application, 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.