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U.S. Citizenship and Immigration Services
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-06-103-10004

Office: NEW YORK

Date:

JUL 15 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:

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, or *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 of the New York office, 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 Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. 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 time period.

On appeal, counsel asserts that the applicant has established his unlawful residence for the requisite time period. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 periods, 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).

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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, 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).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 issue in this proceeding is whether the applicant (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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits, a letter, several postmarked envelopes, and copies of airline tickets. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains fill-in-the-blank affidavits from [REDACTED] and [REDACTED] who state that the applicant lived at [REDACTED] in Hollis, New York from July 1981 for the duration of the requisite period. However, the applicant does not list this address as a residence address on the instant I-687 application. In addition, although [REDACTED] states that he worked with the applicant, [REDACTED] does not state for what period of time he has known or worked with the applicant.

The applicant submitted the affidavit of [REDACTED] who states that he met the applicant in 1982 at a block party, and that the applicant lived at [REDACTED] in Jamaica, New York for years. However, the applicant does not list this address as a residence address on the instant I-687 application. In addition, the affiant does not state for what period of time the applicant lived at that address.

The record contains the affidavit of [REDACTED] who states that he has known the applicant for approximately 25 years.⁴

The applicant has submitted a letter and an affidavit from [REDACTED] who states that he met the applicant in 1981 through a friend. Although the affiant states that the applicant has been his car mechanic for several years since 1981, the affiant does not state for which years the applicant has been his mechanic.

The record contains two affidavits from [REDACTED] who states that she has known the applicant since June 1981 when her car broke down and the applicant stopped to assist her. The affiant states that the applicant fixed her car and the cars of other members of her family, but she does not state the dates on which the applicant repaired their cars. In addition, the affiant states that through the years she has visited the applicant at residences located at [REDACTED] and [REDACTED]. However, the applicant does not list a residence on [REDACTED] in the instant I-687 application.

The applicant has submitted two affidavits from [REDACTED] who states that she met the applicant in 1981 at a block party. She states that the applicant became her automobile mechanic in 1984.³

The applicant submitted three affidavits from [REDACTED] who states that he met the applicant in 1981 at Groves Auto Repair Shop, at which time the applicant fixed his automobile. The affiant also states that he visited the applicant at his residence on [REDACTED], at his residence in Rosedale, New York and at his residence on [REDACTED]. However, as stated above, the applicant does not list a residence on [REDACTED] in the instant I-687 application.

[REDACTED] also states that he strongly recommends the applicant for an unstated position. [REDACTED] also states that in 1990, she moved to her current residence on [REDACTED], and that she and the applicant were neighbors there for some period of time. However, the applicant has not listed a residence on [REDACTED] on the instant I-687 application. While outside of the requisite time period, this inconsistency calls into question the affiant's credibility regarding her stated knowledge of the applicant's continuous residence in the United States during the requisite period.

The record contains the affidavit of [REDACTED], the applicant's sister. The affiant states that she knows that the applicant came to the United States in 1981 and resided here continuously because her brother left the family home in Jamaica in 1981 intending to do so.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, and how frequently they had contact with the applicant. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have minimal probative value.

The record contains employment verification letters from [REDACTED] and [REDACTED]. The employment verification letter of [REDACTED], the office manager of Grove's Auto Electric Company in Spring Field Gardens, New York, states that the applicant was employed with the company as an electrician from February 1988 for the remainder of the requisite period.

The applicant has submitted two employment verification letters from [REDACTED]. In his first letter [REDACTED] states that he has known the applicant for more than 25 years and has worked with the applicant at Grove's Auto for 15 years.⁴ In his second letter [REDACTED] states that he first met the applicant in 1986 and worked with the applicant at Grove's Auto Electric from 1988 through the remainder of the requisite period.⁵ [REDACTED] states that starting in 1987 he visited the applicant at his residence on [REDACTED] many times. He states that he later visited the applicant less frequently at his residence in Rosedale. However, as stated above, the applicant does not list a residence on [REDACTED] in the instant I-687 application. Due to these inconsistencies, these documents have minimal probative value.

In addition, the employment verification letters of [REDACTED] and [REDACTED] fail to conform to the regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). The letters fail to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Lacking relevant information, the declarations fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States since February 1988. Therefore, these documents have minimal probative value.

The remaining evidence in the record is comprised of several postmarked envelopes, copies of airline tickets, the applicant's statements, the initial Form I-687 application filed in 1992 to establish the applicant's CSS class membership, and the instant Form I-687.

⁴ [REDACTED] also states that he recommends that the applicant be considered for an unstated position.

⁵ In his second letter [REDACTED] states that he worked with the applicant at Grove's Auto Electric for six years, from 1988 until approximately 1994. While outside of the requisite time period, this inconsistency calls into question the affiant's credibility regarding her stated knowledge of the applicant's continuous residence in the United States during the requisite period.

The applicant furnished three postmarked envelopes with dates of August 1983 and January and April 1988. Although these documents provide some detail regarding the applicant's residence in the United States in August 1983 and in January and April 1988, they are insufficient to establish the applicant's residence during the entire requisite period.

In addition, the applicant submitted copies of Air Jamaica and Eastern airline tickets dated December 14, 1987, listing a trip from New York City to Kingston, Jamaica on December 18th and a return flight to Atlanta, Georgia on December 24th. These documents would provide some detail regarding the applicant's absence from and presence in the United States in December 1987. However, due to the poor quality of the copies of these documents, it is difficult to determine whether information on these tickets has been erased and/or altered. For this reason, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Therefore these documents have minimal probative value

Lastly, the AAO finds in its *de novo* review that the record of proceedings contains documentation that is materially inconsistent with the applicant's claim of continuous residence in the United States since before January 1982 throughout the requisite period. The record reveals that the applicant's initial I-687 application stated that he resided at [REDACTED] in Hollis, New York from July 1981 for the duration of the requisite period.

However, the instant I-687 application lists residences for some period of time at [REDACTED] in Brooklyn and [REDACTED] in Rosedale, but does not state for what periods of time the applicant lived at each address. In addition, at the time of his interview on the instant Form I-687 the applicant stated that for the first three months after his entry into the United States in 1981 he resided at [REDACTED] in Brooklyn, for the next five months at [REDACTED] in Hollis, then from 1981 until some time in 1988 at [REDACTED] in Jamaica, New York, and from some time in 1988 for the duration of the requisite period at [REDACTED] in Rosedale. After his interview the applicant submitted an affidavit stating that for the first three months after his entry into the United States he resided at [REDACTED] in Brooklyn, for the next five months he resided at [REDACTED] in Hollis, then from 1981 for the remainder of the requisite period the applicant resided at [REDACTED] in Jamaica, New York.

These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.