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[Redacted]

FILE:

MSC 04 363 10210  
[MSC 07 279 18995 – Appeal]

Office: NEW YORK

Date:

OCT 22 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On May 19, 2007, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.<sup>1</sup>

The director determined that the applicant failed to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director noted that the documents the applicant submitted appear to be boilerplate, fill-in-the-blank templates. The director found that the applicant had not submitted any credible evidence to corroborate his claim. The director noted that despite the applicant's claim that he worked as a taxi driver from 1981 to 1987, he failed to provide evidence that he possessed a valid driver's license at the time of such employment. The director found that the affidavits from the applicant's brother and uncle could be given little evidentiary weight.

On appeal, the applicant asserts that he tried to contact the New York Department of Motor Vehicles to obtain evidence of when he was first issued a driver's license but the letter he received from them does not "show any old information." He states that he went to the care service company where he worked but they no longer exist. The applicant asserts that the affidavits he submitted are amenable to verification, and that while several of the affiants have moved away, his brother and uncle did include their contact information. He asserts that he went to Citibank to obtain further proof of the money transfers he made to his father, but that the bank could not furnish him anything because at the time he did not have an account with them.

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 periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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.12(e).

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<sup>1</sup> The AAO will adjudicate the appeal of the denial of the applicant's Form I-485 in a separate decision.

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, *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.

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment should be on employer letterhead stationary, if the employer has such stationary, and must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The record reflects that on September 27, 2004, the applicant filed a Form I-687, Application for Status as a Temporary Resident. On May 3, 2005, the applicant appeared for an interview based on his application.

The applicant has provided the following evidence relating to the requisite period:

- A merchandise receipt from S & D Variety Electronics in New York City. The date and the applicant's name are handwritten on the receipt. Although the applicant's name is written on these receipts, no address is included on any of them, and, while a receipt for purchase may indicate presence in the United States on the date issued, it has minimal weight as evidence of continuous residence;
- Two money transfer receipts from Cable Transfer International/USA. The applicant's name, address, and date are handwritten on the receipt. Again, while such receipts may indicate presence in the United States on the date issued, they can be given minimal weight as evidence of residence in the United States during the statutory period;
- An affidavit from [REDACTED], the applicant's brother. The affidavit is not notarized and is not dated. Mr. [REDACTED] asserts that he was living with the applicant in Egypt when the applicant moved to the United States in January 1981. He asserts that the applicant is of good moral character. While he states that between January 1982 and May 1988 the applicant called him weekly from the United States and that they sent each other letters, [REDACTED] does not provide the addresses or even the cities where the applicant lived in the United States during this time. [REDACTED] does not provide any specific details of the circumstances of the applicant's residence in the United States during the statutory period other than the fact that he lived in the United States. Given this lack of detail, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period;
- A fill-in-the-blank "Affidavit of Witness" form dated June 29, 2002, from [REDACTED]. He states that he is a U.S. citizen and fills the blanks for his current address and employer. He also fills in the blanks for the address and place of employment when he met the applicant. The form allows the affiant to fill in a statement about when he or she first met the applicant. Mr. [REDACTED] added "at Flushing Medow Park and we start the frindship and we call and visit each other." The form then allows the affiant to fill in a statement that he or she is aware that the applicant came to the United States on a certain date "and began living her because: \_\_\_\_\_." Mr. [REDACTED] added "he toled me when we met together." The form further allows the affiant to explain how he or she knows the applicant was living at a certain address during the statutory period. Mr. [REDACTED] filled in: "We visited each other one a month and we call him every month and we met in restaurant in Brocklen." He also states that he saw the applicant drive a taxi many times. Mr. [REDACTED] claims knowledge about a trip the applicant took to Egypt in November 1987 because "he toled me his mother sick and I gave him ride to the airport."

This affidavit, prepared on a fill-in-the-blank form, contains minimal details regarding any relationship with the applicant during the requisite period. Mr. [REDACTED] fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the address where he resided and the fact that he saw him driving a taxi. He provides no documentation to establish that he himself was residing in the United States during the statutory period. As such, this affidavit minimal weight as evidence of the applicant's residence in the United States during the requisite period;

- Four "Affidavit of Witness" forms, all notarized in either November or December 1989. The form, signed by [REDACTED] and [REDACTED], indicates that the affiant has personal knowledge that the applicant has resided in the United States at three addresses in Brooklyn, Queens, and Astoria, New York, from March 1981 to date of the affidavit. The form allows the affiant to fill in a statement that he or she "is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): \_\_\_\_." Ms. [REDACTED] added: "He was rented a room in my house, also we still in touch by visiting each other and calling each other." [REDACTED] added: "I meet him in Muslims Mosque and start a friendship." Ms. [REDACTED] added: "I meet him by a common friend and start a close friendship." Mr. [REDACTED] added: "I meet him at party and start a friendship."

These affidavits, prepared on duplicate fill-in-the-blank forms, contain minimal details regarding any relationship with the applicant during the requisite period and fail to even state the dates when the affiants and the applicant met. Although the addresses the affiants provide are generally consistent with information provided by the applicant on his Form I-687, the affiants fail to indicate any personal knowledge of the applicant's claimed entry to the United States during that year or of the circumstances of his residence other than his addresses. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements. As the landlord, Ms. [REDACTED] fails to provide the specific address where and dates when the applicant lived in her house and fails to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant;

- A letter addressed "To Whom It May Concern," and dated November 24, 1989, signed by [REDACTED]. Ms. [REDACTED] provides her current address and states that she rented a room at that address to Mr. [REDACTED] from March 1981 to December 1988. She states that during this time the applicant was "very responsible, hardworking, and never gave me any problem." Ms. [REDACTED] fails to provide documentation that she resided at the given address and again, as the

applicant's landlord for over seven years, she fails to submit corroborating evidence of the applicant's residence in the dwelling, such as a lease or rent receipts, or in the alternative, an explanation of the payment arrangements that existed with the applicant;

- Two employment verification letters. In a letter dated December 9, 1989, [REDACTED] manager of the Carmel Private Car & Limousine Service, states that the applicant worked for him as an independent contractor/driver beginning in June 1987 and that his average weekly earnings were \$500.

In a letter dated December 13, 1987, [REDACTED] manager-dispatcher at New Way Taxi Service, states that the applicant worked for them as a driver by commissions from March 1981 to May 1987. She further states that the applicant was a hard worker and a person of good moral character.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employers fail to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employers also failed to declare which records the information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable; and,

- A letter dated July 19, 1990, from [REDACTED], M.D. Dr. [REDACTED] states that the applicant was treated in the office for recurrent low back pains since November 1981. Dr. [REDACTED] states that the applicant was treated with physical therapy and diathermy treatments. Dr. [REDACTED] indicates nothing more. He fails to indicate what records were consulted or to submit photocopies of these records. Dr. [REDACTED] does not specify the possible cause or causes for the applicant's recurrent low back pains and does not provide any date(s) of the applicant's visits or an address provided by the applicant in the doctor's records. Furthermore, the letter is not supported by copies of contemporaneous records. Given this lack of detail and authentication, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period.

For the reasons noted above, these documents can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period.

The record of proceedings contains other documents, including 1992 through 2003 Internal Revenue Service Forms 1040, Individual Income Tax Returns, a 2003 Form W-2, Wage and Tax Statement, and various New York State Department of Taxation and Finance, Forms IT-200, Resident Income Tax Returns. These documents all indicate physical presence after May 4, 1988. As such, they can be given no weight as evidence of the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States without inspection on February 15, 1981, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Therefore, based on the above, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. The applicant has not overcome the particular basis of denial cited by the director and is ineligible for temporary permanent resident status.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.