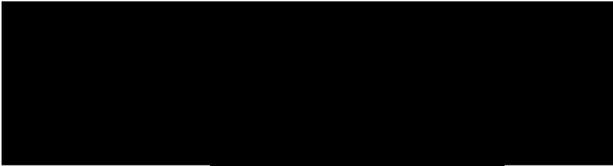


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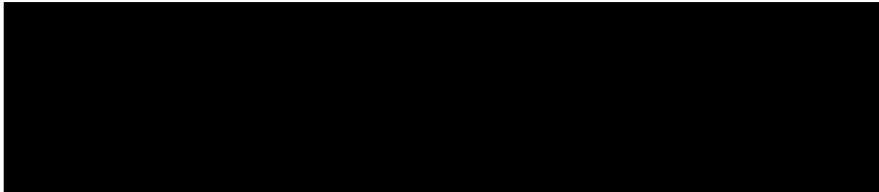
FILE:  Office: Newark
MSC 05 201 13125

Date: **AUG 22 2007**

IN RE: Applicant: 

PETITION: 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. All documents have been returned to the office that originally decided your case. 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: 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 and May 4, 1988. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of residence in this country during the period in question and raises objections to the denial of his application on a point by point basis.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

An applicant for temporary residence 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a

completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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).

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 19, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in South Orange, New Jersey from August 1981 through at least the date of the termination of the original legalization application period on May 4, 1988. At part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc, the applicant listed "None."

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] stated that she first met the applicant while he was cutting the grass of her neighbor in 1985 and that she and the applicant had remained friends since. However, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States after 1985. In addition, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 to that date she and the applicant met in 1985.

The applicant provided an affidavit signed by [REDACTED] who noted that she and the applicant had a close friendship since 1981 and that they were both members of the same church. However, [REDACTED] testimony that she and the applicant were members of the same church did not correspond to the applicant's testimony as he listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. While [REDACTED] attested to the applicant's residence in this country in this country since 1981, she failed to provide any specific and detailed testimony such as the applicant's address(es) of residence to corroborate her claim of residence in the United States in the requisite period.

On March 21, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit sufficient evidence of continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country for the period in question.

In response the applicant submitted a statement in which he reiterated his claim of residence in the United States for the requisite period and stated that CIS had failed to consider the weight of evidence he submitted in support of such claim. However, the two affidavits included with the Form

I-687 application are of minimal probative in that neither affiant provided any direct verifiable testimony that would tend to substantiate the applicant's claim of residence in this country since prior to January 1, 1982.

The applicant provided an affidavit signed by [REDACTED] who declared that that he had known the applicant since 1981 when he met the applicant in New Jersey through the applicant's mother. Nevertheless [REDACTED] failed to provide any pertinent information to corroborate the applicant's claim of residence in the United States since 1981.

The applicant included an affidavit that is signed by [REDACTED] an individual whose previous affidavit was submitted with the Form I-687 application. In this new affidavit, [REDACTED] reiterated that she first met the applicant while he was cutting the grass in her neighborhood in 1985. [REDACTED] noted that the applicant was living in South Orange, New Jersey from the date they initially met up until 1989. However, [REDACTED] once again failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 to that date she and the applicant met in 1985.

The applicant submitted an affidavit that is signed by [REDACTED] an individual whose previous affidavit was included with the Form I-687 application. In her new affidavit, [REDACTED] stated, "The first time I met [the applicant's name] was in 1981, when we used to go to Sunday Masses at St. Anthony of Padua. I know at that time [the applicant's name] was living in South Orange..." However, as discussed above, [REDACTED]'s testimony that she and the applicant were members of the same church did not correspond to the applicant's testimony as he listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

While the applicant also provided two additional affidavits with his response, these affidavits have no probative value and neither affiant provided any testimony relating to the applicant's residence in the United States during the requisite period.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on August 10, 2006.

On appeal, the applicant objects to the notice of denial's reference to the immigration status of affiants who provided supporting documentation and events that occurred prior to January 1, 1982 and after the termination of the original legalization application period on May 4, 1988. The applicant correctly notes that these events and the immigration status of his affiants should have no affect on a determination of the credibility of his claim of residence in the United States. Consequently, such events and the immigration status of any affiant who provided supporting documentation are considered to be irrelevant in determining whether the applicant has demonstrated continuous residence in this country since before January 1, 1982 through the date

that he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 and May 4, 1988.

The applicant reiterates his claim of residence in this country since 1981 and asserts that no attempt has been made to contact any of the affiants who provided documents in support of such claim. However, the applicant failed to provide evidence containing sufficiently detailed and verifiable information to corroborate his claim of residence in the United States in the requisite period. The applicant fails to advance any compelling reason as to why any attempt to verify the testimony contained in his supporting documents should be made in light of the minimal probative value of these affidavits.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of testimony that does not conform to the applicant's own testimony relating to critical elements of his claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A(a)(2) of the Act. 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.