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PUBLIC CASE

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: NEW YORK

Date:

DEC 05 2007

MSC 05 231 10214

IN RE:

Applicant:



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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 of May 5, 1987 to May 4, 1988. The director found that there were inconsistencies between the applicant's original claim and documentation submitted in support thereof and, therefore, found that the applicant failed to establish eligibility to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant disputes the director's findings and submits his own sworn statement discussing the evidence submitted in support of his claim.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. *See* 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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the requisite statutory period. In support of the Form I-687, which was filed on May 19, 2005, the applicant submitted the following:

1. A notarized letter dated May 12, 2005 from [REDACTED] stating that he has known the applicant and shared an apartment with the applicant from 1985 to 1991. Although [REDACTED] provided his current address, he did not provide the address of the apartment he purportedly shared with the applicant during the relevant time period.
2. A notarized letter dated May 10, 2005 from [REDACTED] claiming to have known the applicant from 1981 to 1985. No verifiable information was provided.
3. A notarized letter dated May 2, 2005 from [REDACTED] attesting to the applicant's character and claiming to have known the applicant since 1986. No verifiable information was provided.
4. A letter dated December 11, 2005 from [REDACTED] claiming that he has known the applicant since 1981. He further stated that he worked at The Great American Health Bar as a sales person in 1981 and that at that time the applicant worked for the same establishment as a flyer distributor.

Although the applicant submitted various additional notarized letters in support of the Form I-687, the documents do not address the applicant's residence in the United States during the relevant statutory time period and, therefore, need not be discussed.

On March 6, 2006, a notice of intent to deny (NOID) was issued putting the applicant on notice that the evidence previously provided in support of the Form I-687 was insufficient to establish the applicant's claim. The director further stated that the individuals whose written testimony was discussed in Nos. 2 and 4 above failed to submit documentation establishing their respective presence in the United States during the time periods of their claimed knowledge of the applicant's U.S. residence.

In response, the applicant submitted the following additional documentation:

1. A letter dated March 30, 2006 from [REDACTED] reasserting the facts stated in his previous letter. [REDACTED] further stated that the applicant resided at 34-16 41st St., Astoria, New York in 1981. He claimed that this knowledge was based on his personal experience of having visited the applicant in "1981/1982." [REDACTED] also provided his birth certificate and driver's license thereby proving his identity.
2. An affidavit dated April 1, 2006 from [REDACTED] claiming to have lived with the applicant at the above cited address in 1981. The affiant also provided documents as proof of his identity.
3. A sworn statement from the applicant reasserting his original claim of having entered the United States in 1981. The applicant provided an account of his claimed residences and employment in the United States since his alleged entry in 1981. With regard to employment in the United States, the applicant stated that he was self-employed from June 1981 to June 1989 and claimed that he also distributed flyers for The Great American Health Bar.

On April 10, 2006, the director denied the application concluding that the applicant failed to submit credible, verifiable evidence of his U.S. residence during the statutorily relevant time period. The director noted that the applicant provided inconsistent information with regard to his employment history by failing to identify The Great American Health Bar as an employer in his Form I-687 application but later claiming to have worked at The Great American Health Bar from 1981 to 1989. While the AAO concurs with the director's finding that inconstant information has been provided, it is noted that the applicant did, in fact, identify The Great American Health Bar as one of its employers in the Form I-687. More specifically, the applicant stated that he worked for The Great American Health Bar from March 1995 to the present. Therefore, the director's erroneous observation is hereby withdrawn. However, the director properly pointed out the apparent inconsistency between the applicant's claim on his Form I-687 application, the evidence submitted in support of the claim, and statements made by the applicant after the Form I-687 was filed. The applicant further noted that the statements of [REDACTED] lack verifiable information for any time after 1981. The AAO notes that the applicant must resolve any inconsistencies in the record by providing independent objective evidence. Any attempt to explain or

reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

However, instead of providing such evidence on appeal, the applicant merely provides an additional notarized statement titled, "Self-declaration."¹ In the statement, the applicant provides a summary and brief description of the previously submitted supporting documents and attempts to reconcile the discrepancy noted by the director. Specifically, the applicant alters his prior claims by stating that he worked in front of, rather than directly for, The Great American Health Bar from June 1981 to June 1989 and maintains that during such employment he became acquainted with [REDACTED]. The applicant further states that [REDACTED] used to buy books from him and that [REDACTED] eventually helped the applicant get a job distributing flyers for The Great American Health Bar. While the applicant's explanation is plausible, it does not change the fact that the applicant has asserted a number of varying claims regarding his purported employment for The Great American Health Bar. First, in the Form I-687, the applicant claimed that he started working for The Great American Health Bar in 1995. Then, the applicant submitted a statement from [REDACTED] indicating that the applicant's employment for The Great American Health Bar commenced much earlier than the applicant initially claimed. Now, in the applicant's most recent statement, the applicant matches [REDACTED]'s earlier statement, claiming that he worked as a flyer distributor for The Great American Health Bar until 1995, when he commenced permanent employment with another branch of the company. Although the applicant resubmits a copy of the employment letter signed by the general manager of The Great American Health Bar, the letter states that the applicant has worked for the company since 1995. There is no indication that the applicant was employed by The Great American Health Bar in any capacity prior to 1995. Thus, the applicant has failed to submit objective evidence to reconcile the significant inconsistencies between his own statements and the documentation submitted in support of his claim.

Additionally, the statements of [REDACTED] lack sufficient verifiable evidence to corroborate the applicant's claimed U.S. residence. More specifically, [REDACTED] merely stated that he shared an apartment with the applicant from 1985 to 1991, but provided no address for the applicant during the time of their alleged cohabitation or any other information that would establish a basis for [REDACTED]'s claimed knowledge of the applicant's residence in the United States during the relevant time period. Furthermore, while [REDACTED] provided two separate statements on the applicant's behalf, only the second statement, which was dated April 1, 2006, contained specific evidence pertaining to the applicant's residence. However, the information provided only accounted for a brief time period when the applicant initially arrived to the United States in 1981. [REDACTED] provided no verifiable information subsequent to January 1, 1982.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted inconsistent evidence and information that undermine the validity of the applicant's overall claim.

¹ The statement appears to have been incorrectly dated April 27, 2005. In light of the date of the director's decision and the fact that the statement was submitted in response to that decision, the statement was most-likely written on April 27, 2006.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 contradictory statements and his reliance upon 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 the statutory period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-20* I&N Dec. 77. 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.