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FILE: [REDACTED]
MSC-05-200-10385

Office: LOS ANGELES

Date: DEC 17 2007

IN RE: Applicant: [REDACTED]

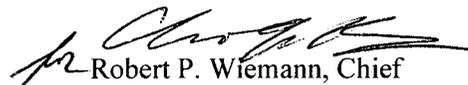
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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, Los Angeles. The decision 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 Class Membership Worksheet, on April 18, 2005. In her Notice of Intent to Deny (NOID), the director stated that the applicant had not submitted sufficient evidence to establish 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 period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. However, because the director stated that her office did not receive additional evidence, she denied the application as 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application because she determined that the applicant was not a class member.

On appeal, the applicant asserts that he did submit additional evidence in support of his application in response to the director's NOID. He submits additional evidence in an attempt to meet his burden of proving that he resided in the United States for the duration of the requisite period.

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)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

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 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.

To meet the requirements of class membership and therefore be entitled to relief pursuant to the CSS Settlement Agreement, an applicant must fall into one of two subcategories as stated in paragraph 1 on page 3 of the settlement agreement:

- A. All persons who were otherwise prima facie eligible for legalization under section 245A of the Act, and who tendered completed applications for legalization under section 245A of the Act and fees to an officer or agent acting on behalf of the former Immigration and Naturalization Service (INS), including a Qualified Designated Entity (QDE), during the period from May 5, 1987 to May 4, 1988, and whose applications were rejected for filing because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole.
- B. All persons who filed for class membership under Catholic Social Services, Inc. v Reno, CIV No. S-86-1343 LKK (E.D. Cal.) and who were otherwise prima facie eligible for legalization under Section 245A of the INA, who, because an INS officer or QDE concluded that they had traveled outside the United States after November 6, 1986 without advance parole were informed that they were ineligible for legalization, or were refused by the INS or its QDEs legalization forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to timely file or complete a written application.

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 date he attempted to file a Form I-687 application with the Service in the original legalization application period of 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 18, 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in New York, New York from March of 1981 until January of 1987; and [REDACTED] in Colton, California from January of 1987 to June of 1994. At part #31 of the application where the applicant was asked to list all churches and organizations of which he has been a member in the United States, he did not indicate that he was a member of any churches or organizations. At part #32

where the applicant was asked to list all of his absences from the United States since his first entry, he indicated that he has never been absent from the United States since entering. At part #33 where the applicant was asked to list all places of employment since entering the United States, he indicated that he was self-employed from 1985 to 1986 in New York as a car washer. It is noted that though the applicant indicated he entered the United States in 1981 and has never left, he did not indicate he was employed from 1981 to 1985 or from 1988 until 2003 on his Form I-687. It is further noted that the applicant would have been fourteen (14) years old in March of 1981 when he asserts he first began residing in the United States.

The record also contains a sworn statement from the applicant. This statement was taken at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on October 21, 2005. In this statement, the applicant states that from 1981 until 1988 he has never left the United States. He goes on to say that he first entered the United States in 1981 and that he never went to an immigration office during 1987 or 1988. It is noted here that this statement does not indicate whether the applicant visited a QDE or whether he was otherwise discouraged from going to an immigration office or filing for legalization during the original filing period. It is further noted that the class membership definitions, as noted previously, specify that to be considered a class member either the INS or a QDE had to have concluded that an applicant traveled outside of the United States between November 6, 1986 and the time the applicant attempted to file for legalization during the initial filing period without advance parole. This statement does not address whether either the INS or a QDE indicated to the applicant that they had come to this conclusion.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following document that is relevant to the requisite period and that the record indicates the director received and considered when making her decision:

- A photocopy of a letter dated June 17, 1981. It is not clear who wrote the letter because the name of that individual was cut off of the photocopy. It is not clear who the letter is written to as it is addressed to, "My Dearest Brother." The letter indicates it was written in Nigeria. The writer of the letter offers condolences to the recipient of the letter who has lost his father. As it is not clear who the recipient of the letter is, it cannot be determined that it was written to the applicant. There is no indication of where the recipient is located or who wrote the letter. Because it was not clear where this letter was sent or who it was sent to, it carries no weight in establishing that the applicant entered the United States on a date prior to January 1, 1982 and then resided continuously in the United States for the duration of the requisite period.

It is noted that the applicant also submitted two photocopies of his current passport that was issued in February of 2003. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. As it is not clear where this document was issued and as it was issued after the requisite period ended, this document is not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since March of 1981 when he was fourteen (14) years old. The only evidence submitted with the application that is relevant to the 1981-88 period in question is a photocopy of a letter that cannot be conclusively linked to the applicant. It is noted here that the applicant would have just turned fourteen (14) years old in March of 1981. He did not submit any documents from an adult who was responsible for his care at that time nor did he submit any immunization or school records with his application.

In her Notice of Intent to Deny (NOID) the director found that the evidence submitted by the applicant did not allow him to prove by a preponderance of the evidence that he entered the United States prior to January 1, 1982 and then resided continuously for the duration of the requisite period. The director granted the applicant thirty (30) days from the date she issued her NOID to submit additional evidence in support of his application. In denying the application, the director stated and the record supports that the Service had not received a rebuttal to the director's NOID that was properly placed in the record as of May 11, 2006. Because there were no documents in the applicant's record that rebutted her NOID, the director found the applicant had not overcome her reasons for denial as stated in her NOID and denied the application.

On appeal, the applicant asserts that he did submit evidence in response to the director's NOID. He submits a photocopy of a delivery confirmation receipt from the United States Postal Service which confirms that an item he sent was delivered on December 21, 2005. He further submits two (2) affidavits and one (1) letter from a church in support of his application. Details of that evidence are the following:

- A photocopy of an affidavit from [REDACTED] that is dated October 16, 2005 and is not notarized. In this affidavit, the affiant asserts he met the applicant on May 31, 1980 in New York. It is noted here that the applicant has consistently stated that he did not enter the United States until 1981. Therefore, doubt is cast on the affiant's assertion that he met the applicant before that date. The affiant goes on to indicate that he lives in Texas and that the applicant is his cousin. Here, the affiant does not offer proof that he himself was in the United States during the requisite period. He provides testimony that is not consistent with what the applicant states as his dates of residence in the United States. He does not indicate that he is personally aware of the events and circumstances of the applicant's residence in the United States during the requisite period. Because this affidavit conflicts with other evidence in the record and because it is significantly lacking in detail, it can be afforded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by 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).

- A photocopy of an affidavit from [REDACTED] that is not notarized and is dated October 5, 2005. Here, the affiant states that he met the applicant in June of 1981 in New York at church. It is noted here that the applicant did not indicate that he was a member of a church on his Form I-687. The affiant, who indicates he currently lives in California, does not state that he is aware of the events and circumstances of the applicant's residence in the United States during the requisite period. He does not offer proof that he himself resided in the United States during the requisite period. He fails to provide an address at which he knows that the applicant resided during the requisite period. Because this affidavit indicates that the affiant met the applicant at church when the applicant has not indicated that he was a member of a church on his Form I-687 and because this affidavit is significantly lacking in detail, it can be afforded very minimal weight in establishing that the applicant resided in the United States during the requisite period.
- The applicant submits a letter from the Church of Christ's Mission that states that the applicant has been a member in good standing for the past six years. As this letter is dated October 10, 2005, this indicates that the applicant has been a member of this church since 1999. As 1999 is subsequent to the requisite period, this letter is not relevant evidence for this proceeding.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) people concerning that period. One of these affiants claims to have met the applicant in New York before the applicant testified he first entered the United States. The other affiant claims to have met the applicant in church, when the applicant did not indicate that he was a member of a church on his Form I-687.

The absence of sufficiently detailed 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 that the evidence submitted by the applicant is not consistent with the testimony he provided to the Service and given 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 date he attempted to file a Form I-687 application 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.