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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 130 10781

Office: NEWARK

Date: MAY 23 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:  
[REDACTED]

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. [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (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 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined 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 and asserts that there is “extensive evidence” in the record of proceeding corroborate 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 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. See 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. 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 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 February 7, 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 indicated that he resided at “██████████ Newark, New Jersey” from April 1981 to December 1983 and at “██████████ Newark, New Jersey” from January 1984 to October 2003. At block #35, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Portugal from June 1987 to July 1987 due to a family emergency.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit from dated February 8, 2006, from ██████████ stating that he has known the applicant since 1981. Mr. ██████████ explained that he met the applicant when the applicant was a customer at the restaurant where he was working at that time, Restaurant, located at ██████████ Newark, New Jersey. Mr. ██████████ further stated that he and the applicant shared an apartment located at “██████████” for the month of October 1981. Mr. ██████████ provided the applicant’s current address in his affidavit,

but he did not provide the applicant's addresses during the requisite period from prior to January 1, 1982 to the date the applicant attempted to file his Form I-687 during the original legalization period ending on May 4, 1988. Furthermore, Mr. [REDACTED] stated that he and the applicant were roommates at [REDACTED] New Jersey" during the month of October 1981. The applicant did not list this address on the application.

The applicant also submitted an affidavit dated February 14, 2006, from [REDACTED] stating that he had known the applicant since 1985. Mr. [REDACTED] explained that he met the applicant at the Portuguese Instructive Social Club in Elizabeth, New Jersey, and they became friends. Mr. [REDACTED] states that the applicant lived in his house from January 1986 to the fall of 1989, but Mr. [REDACTED] did not specify his address during that period. Furthermore, the applicant indicated on the Form I-687 that he resided at [REDACTED], Newark, New Jersey" from April 1981 to December 1983 and at [REDACTED] Newark, New Jersey" from January 1984 to October 2003. These dates do not correspond to the dates listed by Mr. [REDACTED] in his affidavit.

The record contains the Form I-687 application the applicant submitted in 1990 when he applied for class membership in the CSS/LULAC class action lawsuit. The applicant indicated on that application that he last entered the United States on February 12, 1988. At block #33, where applicants were instructed to list all residences since initial entry into the United States, the applicant indicated that he resided at [REDACTED] New Jersey" from August 1988 to the date he attempted to file the Form I-687 application. The applicant did not list a residence in the United States prior to that date.

At block #35, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Portugal visiting his family from April 13, 1986 to May 16, 1986 and from January 10, 1988 to February 12, 1988. This statement contradicts the applicant's statement on the current Form I-687 that he was in Portugal from June 1987 to July 1987 due to a family emergency.

The applicant has not provided any explanation for the contradictions noted 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. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On appeal, the applicant contends that inconsistencies noted by the district director in the denial decision were minor and were explained away by his testimony during the legalization interview.

Contrary to the applicant's assertion on appeal, the discrepancies noted by the district director and those noted in this decision are not minor. Indeed, as previously stated, these discrepancies raise serious questions regarding the credibility of the applicant's claim.

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 people concerning that period, both of which contain contradictions which raise questions of credibility regarding the applicant's claim.

The absence of sufficiently detailed supporting documentation that provides testimony 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 on his applications 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 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.