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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 078 10080

Office: NEW YORK Date:

OCT 09 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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. Therefore, the district 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 asserts that the district director "has not evaluated the totality of the evidence I submitted."

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 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 December 17, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] from October 1981 to March 1993.

At his interview with a CIS officer on March 1, 2006, the applicant stated that he first entered the United States in 1981. He explained that he first traveled to Canada and entered the United States at the Buffalo, New York, port of entry using a nonimmigrant B-2 visitor's visa.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a personal affidavit in which he stated that he first entered the United States without inspection in October 1981. This statement contradicts the applicant's statement during his interview that he entered the United States at the Buffalo, New York, port of entry using a nonimmigrant B-2 visitor's visa. The applicant has not provided any explanation for this discrepancy.

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).

The applicant provided an affidavit from [REDACTED] in which she stated that she had known the applicant since 1987. However, [REDACTED] did not provide any information as to how she met the applicant, the frequency of her contact with the applicant, or the applicant's addresses in the United States during the requisite period. Furthermore, [REDACTED] failed to provide her address or telephone number so that she could be contacted to verify the statement contained in her affidavit. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant included an affidavit dated August 13, 2004, from [REDACTED] a resident of New York, New York. [REDACTED] stated that he had known the applicant since 1985. He explained that he met the applicant in 1985 when they were "selling together in Midtown New York." [REDACTED] stated that since 1985 "our relations continued to reign in serenity." However, [REDACTED] failed to provide any information as to the frequency of his contact with the applicant or the applicant's addresses in this country during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

On March 8, 2006, the district director informed the applicant of her intent to deny his application because he had not submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate his claim. The applicant, in response, stated in a letter dated April 11, 2006:

The Service states that I haven't submitted primary evidence of continuous residence in [the] United States. But the law does not require that an applicant for temporary residence status submit primary evidence. Secondary evidence such as an affidavit is good enough to prove continuous residence. And to that end, I submitted affidavits to prove my application. The Service however has not given enough weight to the affidavits I submitted.

The district director denied the application on October 3, 2006, because the applicant failed to establish continuous residence in the United States during the requisite period.

On appeal the applicant asserts that he has submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period. The applicant further asserts that the district director failed to consider the totality of the evidence submitted in support of his claim.

Under the CSS/Newman Settlement Agreements, applicants for temporary resident status may submit affidavits to establish continuous residence in the United States during the requisite

period. However, the submission of affidavits alone is not always sufficient to support an applicant's claim. The weight to be given any affidavit depends on the totality of the circumstances. Affidavits containing specific, personal knowledge of the applicants' whereabouts during the time period in question will be given greater weight than affidavits providing only generic information.

In this case, the applicant has provided only two affidavits in support of his claim of continuous residence in the United States during the requisite period. One affiant, [REDACTED] stated that she had known the applicant since 1987 and the other affiant, [REDACTED] stated that he had known the applicant since 1985. The applicant has not provided any evidence relating to the period from prior to January 1, 1982 to 1985.

Furthermore, neither affiant has provided relevant, specific, and verifiable information such as the applicant's address in the United States or the frequency of contact with the applicant during the requisite period to corroborate the applicant's claim. Moreover, as previously stated, Ms. [REDACTED] to provide her address or phone number so that she could be contacted to verify the information contained in her affidavit.

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 statement in his personal affidavit and during his interview regarding his manner of entry into the United States 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 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.