



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 05 231 14933

Office: LOS ANGELES

Date: SEP 07 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. 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, California, 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, counsel asserts that the applicant has submitted sufficient evidence to establish continuous residence in the United States during the requisite period by a preponderance of the evidence.

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 May 19, 2005. 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 June 1981 to May 1986 and at [REDACTED] from April 1986 to May 1992.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a fill-in-the-blank affidavit dated May 10, 2005, from [REDACTED] resident of Brooklyn, New York. [REDACTED] who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant resided in Brooklyn, New York, from August 1984 to the date of the attestation. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his

contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also submitted a fill-in-the-blank affidavit dated May 10, 2005 from [REDACTED] [REDACTED] resident of Brooklyn, New York. [REDACTED], who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since 1983. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant included a fill-in-the-blank affidavit dated May 10, 2005, from [REDACTED] [REDACTED] who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since June 1985. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also included a fill-in-the-blank affidavit dated May 10, 2005, from [REDACTED] [REDACTED] a resident of Brooklyn, New York. [REDACTED] who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since August 1981. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant provided a fill-in-the-blank affidavit dated May 10, 2005, from [REDACTED] [REDACTED] a resident of Brooklyn, New York. [REDACTED] who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since May 1984. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also provided a fill-in-the-blank affidavit dated May 10, 2005, from [REDACTED] [REDACTED] a resident of Brooklyn, New York. [REDACTED] who indicated that he and the applicant are friends, stated that he had personal knowledge that the applicant had resided in Brooklyn, New York, since June 1985. This statement contradicts the applicant's statement on the Form I-687 that he has resided in Los Angeles, California, since September 2002. It is noted that [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant submitted a letter dated March 11, 2005, from [REDACTED], owner of R.N. Home Improvement, located at [REDACTED] stated that the applicant worked for him as a temporary helper from 1981 to 1987 for an average wage of \$4.50 per hour.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The letter from Mr. [REDACTED] does not conform to this standard. [REDACTED] provided no information as to the applicant's addresses at the time of employment or the applicant's duties with his company.

The applicant also submitted a letter dated April 10, 2005, from [REDACTED] the owner of [REDACTED] located at [REDACTED] New York." [REDACTED] stated that the applicant worked with him as a temporary helper from 1988 to 1996. The letter from Mr. [REDACTED] does not conform to the employment affidavit standard set forth at 8 C.F.R. § 245a.2(d)(3)(i). [REDACTED] did not provide the applicant's addresses at the time of employment or the applicant's duties during his employment for [REDACTED].

The applicant included a fill-in-the-blank affidavit dated March 12, 2005, from [REDACTED] [REDACTED] stated that the applicant roomed with him in his residence located at [REDACTED] [REDACTED] from June 1981 to May 1986. [REDACTED] further stated that the rent receipts and household bills were all in his name and the applicant contributed toward the payment of the rent and household bills.

The applicant also included a fill-in-the-blank affidavit dated March 12, 2005, from [REDACTED] [REDACTED] stated that the applicant roomed with him in his residence located at [REDACTED] [REDACTED] from June 1986 to April 1988. [REDACTED] further stated that the rent receipts and household bills were all in his name and the applicant contributed to the payment of the rent and household bills. [REDACTED] statements contradict the applicant's statement on the Form I-687 that he resided at "[REDACTED]" from June 1992 to April 1998.

The applicant provided a fill-in-the-blank affidavit dated April 12, 2005, from [REDACTED] [REDACTED] that the applicant roomed with him in his residence located at [REDACTED] [REDACTED] New York" from April 1986 to May 1992.

At the conclusion of his legalization interview on December 6, 2005, the applicant was handed a Form I-72 requesting that he submit additional proof of his affiants' residence in the United States during the requisite period and a contact phone number for each affiant. The applicant, in response, provided a contact phone number for [REDACTED] He did not provide a contact phone number for any of the other affiants, nor did he provide any proof that his affiants were residing in the United States during the requisite period.

The district director denied the application on May 15, 2006, because the applicant failed to submit sufficient evidence to establish continuous residence in the United States during the requisite period.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period by a preponderance of the evidence. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

Counsel did not submit any additional evidence to establish the applicant's continuous residence in the United States during the requisite period.

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 attestations from various individuals whose attestations are either lacking in sufficient relevant and verifiable information to corroborate the applicant's claim or contain statements that contradict the applicant's statements on the Form I-687. The applicant has not provided any explanation for these contradictions.

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 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 reliance on 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.