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U.S. Citizenship
and Immigration
Services

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FILE: MSC-05-302-11236

Office: NEW YORK Date: **APR 15 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. 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. The director determined that the applicant had not established 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 denied the application, finding that 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.

It is noted that the director also erroneously stated that the applicant did not provide any evidence to show that he resided in the United States for the requisite period. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel for the applicant expressed the difficulty of obtaining evidence after the passage of time; and explained that the applicant had submitted a letter from a prior employer, affidavits, a hospital bill, and pay stubs.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to

timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 period, 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).

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.* 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 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 29, 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 listed the following White Plains, New York addresses during the requisite period: [REDACTED] from 1981 to 1986; and [REDACTED] from October 1986 to

November 1988. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: General helper with the Jewish Community Center from October 1981 to September 1986; and cook for FLIK International from October 1986 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, some of which does not relate to the applicant or to the requisite period. The applicant also provided contemporaneous evidence that relates to the requisite period. The applicant submitted multiple pay stubs from Shamrock Maintenance Corporation relating to the following periods, including original documents: December 1986, March 1987, November 1987, and March 1988. These documents are inconsistent with the Form I-687 application, where the applicant failed to list employment with Shamrock Maintenance Corporation and instead indicated he was working as a cook for FLIK International during the period from 1986 to 1988.

The applicant provided a copy of an airplane ticket from Ecuatoriana airlines listing the applicant's name and appearing to indicate that he traveled on the airline on February 2, 1988. The point of origination listed on the ticket is New York. This document constitutes some evidence that the applicant was present in the United States on February 2, 1988.

The applicant also provided a copy of a letter from Ecuatoriana airlines stating that the applicant traveled with the airline on February 3, 1988. This information is inconsistent with the copy of the airline ticket indicating that the applicant traveled on February 2, 1988, instead of February 3. This inconsistency casts some doubt on the authenticity of the letter from Ecuatoriana and, as a result, casts some doubt on the applicant's claim to have resided in the United States during the requisite period.

The applicant provided two money order receipts for money orders issued for the applicant in Greenwich, Connecticut on October 14, 1986 and November 6, 1986. These documents tend to show that the applicant was present in the United States in October and November 1986.

The applicant provided a certified mail receipt dated October 14, 1986, listing the applicant as the sender and listing an address that is consistent with the applicant's Form I-687. This tends to show that the applicant resided in the United States during October 1986.

The applicant provided a copy of a prescription prepared for the applicant by [REDACTED] MD. The year in which the prescription was prepared is illegible. Therefore, this document carries no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a bill for service at White Plains Hospital on April 5, 1988. Since the bill does not list the applicant's address, this document constitutes evidence merely that the applicant was present in the United States on April 5, 1988.

The applicant provided copies of itemized bills for visits to White Plains Hospital listing the applicant as the patient for services on multiple dates in April and May of 1988. The applicant's address was listed as the [REDACTED]. This is inconsistent with the applicant's Form I-687, where he indicated he moved from the [REDACTED] address in 1986, and that he resided at the [REDACTED] address during 1988. This inconsistency casts doubt on the applicant's claim to have resided continuously in the United States throughout the requisite period.

The applicant provided an employee data sheet for Compass Group NAD listing the applicant's name; indicating that he was hired on October 6, 1986; and indicating that the applicant continued to work as a food service worker as of January 1, 2005. This information is inconsistent with the applicant's Form I-687, where the applicant failed to list employment with Compass Group NAD and indicated that he worked as a cook for FLIK International. It is noted that the Form I-687 indicates that FLIK International is located in Tarrytown, New York, and that Tarrytown is also listed on the employee data sheet. This raises the possibility that FLIK International and Compass Group NAD are related entities. The employee data sheet constitutes some evidence that the applicant resided in the United States since October 1986.

The applicant also provided multiple attestations in support of his application. The affidavit from [REDACTED] states that the affiant has known the applicant since 1981, and that the applicant was her neighbor at the [REDACTED] address. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period, except during 1981.

The affidavit from [REDACTED] states that the affiant has known the applicant since 1981. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided a notarized declaration from [REDACTED], which states that the applicant has lived in the affiant's property at the [REDACTED] address from October 1, 1986 until November 1, 1988. This declaration fails to include detail regarding when and how the affiant met the applicant, their frequency of contact during the requisite period, and any periods in which the applicant was absent from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant has known the applicant since 1982 when they met in Tarrytown, New York. The affiant stated that, since that date, the affiant and the applicant have seen each other frequently and socialize together. This affidavit also fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated June 29, 2005, in which the affiant stated that she has known the applicant for about 18 years. This affidavit also fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided a copy of a declaration from [REDACTED] Executive Director of the Jewish Community Center in White Plains, New York. The declaration states that the applicant was employed by the Jewish Community Center from October 1981 to September 1986 as a general helper, handy man and errand person. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records. Hence, little weight will be given to the declaration.

In denying the application the director noted that the applicant had not established 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.

On appeal, counsel for the applicant expressed the difficulty of obtaining evidence after the passage of time; and explained that the applicant had submitted a letter from a prior employer, affidavits, a hospital bill, and pay stubs.

In summary, the applicant has provided contemporaneous evidence to establish his residence in the United States relating to the requisite period that is inconsistent with his Form I-687 or other submitted documents. He has failed to provide sufficient evidence indicating that he resided in the United States prior to October 1986. The applicant has submitted attestations that fail to specifically state that the applicant resided in the United States during the requisite period, except during 1981; lack sufficient detail; or fail to conform to regulatory standards. The affidavit from [REDACTED] fails to specifically state that the applicant resided in the United States during the requisite period, except during 1981. The affidavits from [REDACTED] and [REDACTED] fail to specifically state that the applicant resided in the United States during the requisite period. The notarized declaration from [REDACTED] lacks sufficient detail. The declaration from [REDACTED] fails to conform to regulatory standards.

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 contradictions between the applicant's statements and the documents he presented, and given his reliance upon documents with minimal probative value to establish his residence in the United States prior to October 1986, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.