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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] MSC-06-025-11528

Office: BALTIMORE

Date: APR 22 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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, Baltimore. 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.

On appeal, counsel asserts that the director's decision fails to afford proper relative weight and probative value to the attestations submitted in this case.

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. See 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 or her 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 October 25, 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 [REDACTED] Brooklyn, New York, from February of 1981 to March of 1984; and [REDACTED] Brooklyn, New York, from April of 1984 to May of 1989. Similarly, at part #33, he listed his first employment in the United States as odd jobs from April of 1981 to February of 1984; 702 Construction company from May of 1984 to March of 1988; and Elliot Place from April of 1988 to April of 1993. He also listed 102-02 Grocery as his employer from June of 1993 to April of 1996.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter from the president of the 702 Construction company in which he stated that the company employed the applicant as a full-time construction helper from approximately 1984 to 1988 and that he earned approximately \$6,500.00 in salary per year. Here, the declarant's statement is inconsistent with the applicant's statement that he made under oath and under penalty of perjury during his interview with immigration officers. The applicant stated at the time of his interview that his first job in the United States was a construction job and that he was so employed from June of 1988 to April of 1993. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant stated under oath and under penalty of perjury, doubt is cast on assertions

made in the letter. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Lastly, the letter does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's start date or date of termination. The declarant has failed to indicate whether the employment information was taken from company records. The availability of the company records for inspection has not been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, cancelled checks, personnel records, payroll records, Form 1099, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period, to corroborate the assertions made by the declarant. Because this letter does not conform to regulatory standards, and because it contains statements that conflict with what the applicant stated under oath during his interview with immigration officers, it can be accorded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

- A letter from the president of Elliot Place Grocery Corp. in which he stated that the company had employed the applicant from April of 1988 to April of 1993. The letters do not conform to regulatory standards for attestations by employers. The declarant has failed to indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period, to corroborate the assertions made by the declarant. The attestation fails to conform to regulatory standards for attestations by employers and is insufficient to demonstrate the applicant's presence in the United States since before January 1, 1982. **Finally**, the declarant's name is not typed on the letter.
- A letter from [REDACTED] of 102-02 Grocery Corp. in which she stated that the company employed the applicant from June of 1993 to April of 1996 as a freelance helper. Here, the declarant attests to the applicant's employment during a time that is irrelevant to the present application, and therefore, it cannot be given any weight in establishing the applicant's continuous residence since before January 1, 1982.

In a Notice of Intent to Deny (NOID), dated October 23, 2007, the director noted that the employment letters submitted by the applicant were not relevant, probative, or credible. He further noted that the information given by the president of the 702 Construction Company and the Elliot Place Grocery Corp. was inconsistent with the applicant's statement made under oath during his interview in that the applicant stated that his first job was as a construction helper from June of 1988 to April of 1993, not 1984 through

1988. The director also noted that the 102-02 Grocery Corp. letter was not relevant in that it covered a time period subsequent to the time period in question.

In response to the NOID, counsel asserts in rebuttal that the evidence had not been properly evaluated. The applicant did not submit any additional evidence.

In denying the application the director noted that the NOID clearly stated why the evidence submitted by the applicant was not relevant, probative, or credible. The director reiterates his analysis of each letter submitted by the applicant. The director further noted that Citizenship and Immigration Services (CIS) tried to contact both the president of the 702 Construction company and the Elliot Place Grocery Corp. but, was unsuccessful because there were no phone numbers listed.

On appeal, counsel reiterates his rebuttal and asserts that due to the applicant's language barriers his responses to the interview questions could have been erroneous and not as he intended. Counsel further asserts that the evidence submitted by the applicant is not contradictory but corroborative in nature and is sufficient to establish his eligibility for temporary residence status. The applicant does not submit any additional evidence on appeal.

In the instant case, the applicant has failed to overcome the inconsistencies raised by the director in the NOID, and in his final decision. Contrary to counsel's claims, the record demonstrates that the director weighed all evidence submitted and accurately evaluated the documentation based upon its relevance, probative value, and credibility. Although counsel claims that the applicant's responses to questions presented during his interview with immigration officers were misconstrued and that the evidence submitted corroborated the applicant's claim of being present in the United States since before January 1, 1982, he has repeatedly failed to submit independent credible documentation to substantiate the assertions. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Here, the employment letters conflict with statements made by the applicant, they do not conform to regulatory standards for attestations made by employers, and are not amenable to verification. It is also noted that the letter submitted by the applicant from 102-02 Grocery Corp. is not relevant to the requisite time period and has no probative value.

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 the applicant's reliance upon documents that do not conform to regulatory standards, are inconsistent with his statements, are not relevant, and have minimal or no probative value, 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.

Finally, it is noted that according to an FBI report that is based upon the applicant's fingerprints, he was arrested on August 30, 2006, by members of the Baltimore Police Department and subsequently charged with possession of a controlled dangerous substance of schedule I, in violation of the Maryland Annotated Code, section CR 5-601. (Case number [REDACTED]). The applicant has not provided a final court disposition of this charge.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.