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FILE: [REDACTED]
MSC-05-222-10947

Office: NEW YORK

Date: **APR 24 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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. Specifically, the director stated that though the applicant had submitted evidence in the form of affidavits, in support of his application, those affidavits did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. In saying this, the director noted that the affiants from whom the applicant submitted affidavits did not submit proof of their identities nor did they submit proof that they themselves resided in the United States during the requisite period. She went on to note that credible affidavits are those which include documents identifying the affiants, proof that the affiants were in the United States during the statutory period and proof that there was a relationship between the applicant and the affiant. Here, as the affidavits were lacking with regards to these criteria, 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, the applicant, through his attorney, states that all evidence submitted by the applicant is bona fide and genuine. He goes on to say that all affiants are willing to verify their statements. He states that each affiant submitted his or her identification with their respective affidavits. He asserts that the director did not clearly state why the applicant's response to the director's NOID was not considered favorably and asserts that the evidence previously submitted warrants further consideration.

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)(1).

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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) or the Service on May 10, 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 showed his addresses in the United States during the requisite period to be: [REDACTED] in Woodside, New York from October 1981 until October 1986 and then [REDACTED]

in Brooklyn, New York where he resided from November 1986 until April 1990. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that during the requisite period he worked selling flowers near the subway in Woodside, New York from December 1981 until October 1984 and then worked for construction companies in Brooklyn, New York from November 1984 until April 1990.

Also in the record is a photocopy of a Form I-687. This Form I-687 is dated July 19, 1991. Information regarding the applicant's addresses of residence and places and dates associated with the applicant's employment during the requisite period are consistent on this Form I-687 and that which the applicant submitted pursuant to the CSS/Newman Settlement Agreements.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish that he maintained continuous unlawful residence in this country since prior to January 1, 1982, and then for the duration of the requisite period, the applicant submitted two affidavits that are relevant to the requisite period as follows:

- A notarized letter that is dated July 16, 1999 from [REDACTED], who states he is a United States citizen who has resided in the United States since 1978. Here, [REDACTED] states that he has known the applicant since 1982. Here, though [REDACTED] states he has resided in the United States since 1978, he fails to submit proof that he resided in the United States since that time. He further fails to submit documents as proof of his identity or proof that he resided in the United States for the duration of the requisite period. Though he indicates that he has known the applicant since 1982, he does not state where he met the applicant or indicate whether it was in the United States. He fails to indicate that he has personal knowledge of where the applicant resided in the United States during the requisite period. Because [REDACTED] states that he did not meet the applicant until 1982, this letter carries no weight in proving that the applicant entered the United States before January 1, 1982. Further, because this letter is significantly lacking in detail, it carries very minimal weight as proof that the applicant resided in the United States during the requisite period.

- A photocopy of an affidavit from [REDACTED] that was signed and notarized on July 19, 1991. In this affidavit, the affiant lists the applicant's addresses of residence consistently with what he showed on his Forms I-687. The affiant states that he knows the applicant has been in the United States since 1981 and that he saw the applicant three to four times a week when the applicant would go shopping at his store. He states that the longest period of time which he has not seen the applicant is twenty-one (21) days. Although not required, the affiant does not submit proof of his identity or proof that he himself was present in the United States for the duration of the requisite period. Though he states that he has known the applicant since 1981, he fails to indicate how he knows when the applicant began shopping at his store. The affiant does not provide a telephone number at which he can be reached to verify information in this affidavit. Because this affidavit is lacking in detail and because it is not readily amenable to verification it carries very little weight as proof that the applicant entered the United States before January 1, 1982 and then resided continuously in the United States since that time and then for the duration of the requisite period.

It is noted that the applicant has also submitted letters from "[REDACTED]," Two Brothers' Construction, PSP Construction, [REDACTED] and from the applicant's former roommate [REDACTED]. All of these letters verify the applicant's addresses of residence or employment subsequent to May 4, 1988. The issue in this proceeding is the applicant's residence in the United States during the requisite time period, which ended on May 4, 1988. Because these letters verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

The director issued a Notice of Intent to Deny (NOID) on March 24, 2006. In her NOID, the director stated that the applicant did not submit sufficient evidence that would allow him to prove by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

In response to the director's NOID, the applicant, through his attorney submitted a brief in which he asserts that the applicant's limited ability to speak and write English resulted in his reliance on other individuals to assist him when he completed his forms. He goes on to say that inconsistencies noted by the director were unintentional. He asserts that all affiants from whom the applicant submitted affidavits are bona fide and genuine. He states that all affiants are willing to come forward and testify. It is noted here that the applicant does not supply the Service with phone numbers at which the affiants can be reached to verify information in their affidavits. The applicant's attorney states that many documents that the applicant would have submitted have been lost.

The director noted that her office received additional information in support of the application, but found that it was not sufficient to allow the applicant to meet his burden of proof. Therefore, she denied the application for temporary residence on September 23, 2006. As was previously noted, in denying the application, the director found though the applicant had submitted evidence in the form of affidavits, in support of his application, those affidavits did not carry sufficient

weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. She noted that credible affidavits are those which include documents identifying the affiants, proof that the affiants were in the United States during the statutory period and proof that there was a relationship between the applicant and the affiant. As was previously noted, the affidavits submitted by this applicant were lacking with regards to these criteria.

On appeal, the applicant, through his attorney, states that all evidence submitted by the applicant is bona fide and genuine. He goes on to say that all affiants are willing to verify their statements. He states that each affiant submitted his or her identification with their respective affidavits. He asserts that the director did not clearly state why the applicant's response to the director's NOID was not considered favorably and asserts that the evidence previously submitted warrants further consideration. He does not submit further evidence for consideration in support of this application.

As was noted previously, only two affidavits submitted by this applicant were relevant to this proceeding. Though the director noted the criteria needed to deem an affidavit credible, those affidavits were not submitted with documents identifying the affiants, nor were they submitted with proof that the affiants themselves resided continuously in the United States for the duration of the requisite period. Further, they were significantly lacking in detail and therefore they were not sufficient to allow the applicant to prove that he entered the United States prior to January 1, 1982 or to prove that he resided from that date for the duration of the requisite period by a preponderance of the evidence.

In summary, the applicant has not provided sufficient evidence of residence in the United States during the requisite periods to prove that he did so by a preponderance of the evidence. The statements he submitted are not amenable to verification and lack probative value for the reasons noted.

In this case, the absence of probative documentation that is amenable to verification that would corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.