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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 237 15360

Office: NEW YORK

Date:

AUG 07 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 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, 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits

The following affidavits were submitted on appeal:

- [REDACTED] submitted a sworn statement wherein he states that he has known the applicant since the summer of 1981, and that he knows the applicant has been residing in the United States since that time. The affiant states that he met the applicant while walking through Queens in New York when he noticed a man having trouble with his vehicle. The applicant assisted the affiant with his predicament and the two became friends, and the affiant began working with the applicant a few weeks later. The affiant states that the friendship continued, and that they worked “at the same company” from 1981 until 2004. The employment information submitted by the applicant does not indicate that he worked for any single employer from 1981 until 2004;

- [REDACTED] stated in a sworn affidavit stating that he met the applicant in approximately the fall of 1982 when the applicant sold the affiant a television at the applicant's store. The affiant states that he continued to call upon the applicant for his electronics needs, and would occasionally help the applicant and the applicant's employees unload trucks at the applicant's business. The affiant does not identify the name of the business where the applicant worked;
- [REDACTED] submitted a sworn affidavit stating that he has known the applicant since the spring of 1981, and that the applicant had resided in the United States since that time. Mr. [REDACTED] states that the applicant hired him as a truck loader for his (the applicant's) electronics shop in Manhattan, and that he continued to work for the applicant for seven years. The affiant notes that while his relationship with the applicant was business based and that the two were not "very close," the two would occasionally socialize. The affiant does not identify the name of the business where he was employed by the applicant;
- [REDACTED] submitted a sworn affidavit stating that he worked for the applicant from 1988 until 1991 at the applicant's appliance store, that the two became friends and have remained in contact, and that the affiant knows that the applicant has been residing in the United States since 1981. The affiant does not identify the name of the business where he was employed by the applicant;
- [REDACTED] submitted a sworn affidavit stating that he met the applicant in August of 1981. At that time the affiant was making a delivery in Jamaica, NY when the applicant suddenly approached him and offered him a job working at the applicant's store in Manhattan. The affiant states that he still (as of the date of the affidavit - November 17, 2006) works for the applicant on a part time basis in the applicant's store, and that the two are friends, although their relationship is primarily business. The affiant does not identify the name of the business where he was employed by the applicant. Further, the employment information submitted by the applicant does not indicate that he worked for any single employer from 1981 until 2006;
- [REDACTED] submitted a sworn affidavit stating that he has known the applicant since June or July of 1984. The two met by chance when the affiant walked by the applicant who then asked for the affiant's assistance in unloading a truck. The affiant states that he then began working for the applicant at his electronics store, and that he worked in that capacity for eight years. The two were on a friendly basis and maintained occasional contact after the affiant stopped working for the applicant in 1992. The affiant does not identify the name of the business where he was employed by the applicant. Further, the employment information submitted by the applicant does not indicate that he worked for any single employer from 1984 until 2006;
- [REDACTED] submitted a sworn affidavit stating that he met the applicant in approximately September of 1983 when the applicant's truck broke down in the Bronx. The affiant states that he assisted the applicant in his predicament, for which the affiant was paid.

The affiant states that he has been a customer at the applicant's store "ever since that day" (the date of the affidavit is November 17, 2006). The affiant does not identify the name of the store where he was the applicant's customer. Further, the employment information submitted by the applicant does not indicate that was employed by any single employer from 1983 until 2006;

- [REDACTED] submitted a sworn affidavit stating that he has known the applicant since the summer of 1981, and that he knows that the applicant has resided in the United States since that time. The affiant states that he met the applicant at an electronics store in Manhattan while shopping for a stereo. The affiant states that he next met the applicant in the summer of 1982 when he saw the applicant unloading a truck and decided to assist him. The two exchanged telephone numbers and have remained in contact socially since that time;
- [REDACTED] submitted a sworn affidavit stating that he first met the applicant in the summer of 1984, and that the applicant "used to own an appliance store" (there is nothing in the record establishing the applicant's ownership of an appliance store, nor does the affiant name the appliance store). The affiant states that he was a customer at the applicant's store, and that on occasion he would pass out flyers for the store. The applicant states that he knew the applicant more as an "acquaintance" than as a friend;
- [REDACTED] submitted a sworn affidavit stating that he first met the applicant in approximately July of 1981 at the applicant's appliance store while shopping, and that the applicant has been residing in the United States continuously since 1981. The affiant states that he asked for, and received, employment from the applicant and has continued to work for the applicant from 1981 until the date of his affidavit (November 17, 2006). The affiant states that he and the applicant are good friends. The employment information submitted by the applicant does not indicate that the applicant was employed by any single employer from 1983 until 2006; and
- [REDACTED] submitted a sworn affidavit stating that he first met the applicant in the summer of 1981 in a restaurant in Queens when he overheard the applicant's conversation with another individual. The affiant was in need of work and inquired about a job. He was then hired to work unloading trucks. The affiant states that he then became good friends with the applicant and socialized with him, and that the applicant visited him while he (the affiant) was incarcerated from 1999 – 2004. The affiant further states that the applicant has been residing in the United States since the summer of 1981.

Applicant's Sworn Statements

The affiant submitted the following sworn statements:

- On October 18, 2005, the applicant made a sworn statement to a United States immigration officer. The affiant stated, in pertinent part that: he entered the United States without

inspection in June of 1981; he lived in Queens from May of 1982 until August of 1988; he first left the United States in March of 1988 to look for work in Canada, and returned to this country after about three weeks; and he next left the United States during the first week of April, 1988 to secure a visa in India so that his employer could sponsor him for immigration, returning approximately one and one-half months later.

- On appeal, the applicant submitted a sworn affidavit stating that he entered the United States without inspection in approximately June of 1981. The applicant states that when he completed the Form I-687, he was “in a hurry” due to time constraints, and that he did not carefully read all points and directions, which led to discrepancies. The applicant further states that: from July 1, 1981 until August of 1982 he did not have a stable place of residence, often moving from place to place which made it difficult to retain documentation from that time frame; from August of 1982 until August of 1988 he resided at [REDACTED] and that his employer allowed him to live in the basement of his employer’s warehouse (the record contains no statement from the employer, or any other documentary evidence, that the applicant lived on his employer’s premises - Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972))); he went to India in April of 1988 and “got rid of most of [his] papers;” his trip to India (April of 1988) was due to his mother’s illness, and lasted approximately one and one-half months (the record contains no corroborating documentation of his mother’s illness, such as medical records); his employer informed him that if he returned from India with a valid visa it (the employer) would sponsor him for labor certification; upon his return to the United States, he was employed at several different jobs before being employed on a regular basis with Kaso International, Inc. from June of 1982 until March of 1991, and that during that time frame he was also employed by India Worldwide from August of 1987 until March of 1991, and by [REDACTED] Worldwide, Inc. from August of 1988 until March of 1991; and that he was paid in cash by these three employees because he lacked legal status in the United States.

Passport

The applicant submitted a copy of his passport issued in India on May 5, 1988, which contains a United States multiple entry B-2 visa valid until May 10, 1989, and an I-94 card establishing the applicant’s entry on June 11, 1988.

Receipts

The applicant submitted copies of various receipts issued during the requisite period. The receipts, however, are of little evidentiary value as they do not establish that they were issued to the applicant.

Other Documentation

The applicant submitted other documentary evidence to establish his residence in the United States that covers periods of time outside the requisite period for the immigration benefit sought. That documentation, therefore, is not deemed relevant to these proceedings and will not be further discussed. The various business documents submitted with regard to employers cited by the applicant are accepted by the AAO as evidence of those employers' existence during whatever periods are indicated by the documents.

The applicant indicates on the Form I-687 that he resided in the United States during the requisite periods as follows:

From June of 1981 to July of 1982 at various unnamed addresses in Queens, Manhattan and New Jersey; and

From August of 1982 to February of 1988 at [REDACTED]

Although the applicant has submitted numerous affidavits and his sworn statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The witness affidavits reference general topics of discussion with the applicant (such as sports, family life, and the world situation). However, none provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. Furthermore, none of the affiants submitted the name of the establishment where they allegedly worked with the applicant, any proof of such employment, or a basis for verification of that employment. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. Upon review, the AAO finds that, individually and together, the witness affidavits do not indicate that their assertions are probably true. Therefore, they have little probative value.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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 his claim. As previously stated, pursuant to 8 C.F.R. § 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 with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

It should further be noted that the applicant has provided contradictory information in attempting to establish his claim. That information includes:

- The applicant lists his employment as follows on the Form I-687:
 - August of 1981 – April of 1992 - Various employers in Queens/Manhattan;
 - May of 1982 – June of 1992 - SORA WORLDWIDE, INC./KASO, INC.;
 - July of 1987 to June of 1992 - India Worldwide, Inc.;
 - March of 1992 – October of 1999 - Various Temporary Agencies;
 - July of 1992 - November of 1994 - Donovan Leisure;
 - October of 1993 – October of 1996; and
 - October of 1996 – May of 2005.

The applicant submitted, on appeal, his sworn statement indicating that his employment history was as follows: from June of 1982 until March of 1991 - Kaso International; From August of 1987 until March of 1991 - India Worldwide; and from August of 1988 until March of 1991 – SORA WORLDWIDE, INC.

The statements submitted by the applicant with regard to his employment history are clearly contradictory, and those contradictions have not been sufficiently explained by the applicant. Documentation from the NYS Department of State, Division of Corporations, establishes that SORA WORLDWIDE, INC. (for whom the applicant claims employment on the Form I-687 from 5/82 until 6/92, and for whom the applicant claims employment in his sworn statement of November 21, 2006 from 8/88 until 3/91) was initially formed on August 8, 1990, thereby making it impossible for the applicant to have been employed as stated by him on the Form I-687, or in his sworn statement submitted on appeal. The applicant attempts to explain this discrepancy by simply stating, on appeal, that the businesses he claims to have worked for were in existence. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining

evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The conflicting evidence is material to the claim in that it brings into question the applicant's activities and whereabouts during the requisite period.

Therefore, based upon the foregoing, the applicant 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.