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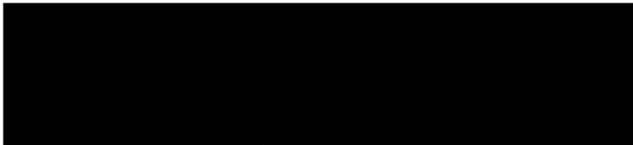
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-246-11418

Office: NEW YORK

Date:

FEB 06 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:

SELF-REPRESENTED

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, 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, and had not established that he met the continuous physical presence requirements for temporary resident status. 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. The director specifically mentioned that the applicant was approximately two years old when he allegedly entered the United States, yet he was unable to provide medical or school records for the requisite period.

On appeal, the applicant stated that the immigration officer who interviewed him asked very few questions, did not spend sufficient time reviewing the contents of the applicant's file, and did not evaluate the evidence fairly.

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)(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).

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 submitted evidence, when taken as a whole, is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 3, 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 addresses during the requisite period: [REDACTED] New York, New York from November 1981 to June 1983; and [REDACTED] Brooklyn, New York from June 1983 to October 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Multiple attestations submitted by the applicant failed to specifically confirm the applicant resided in the United States during the requisite period. These included the affidavits of [REDACTED] dated April 12, 2005 and February 20, 1988; the affidavits of [REDACTED] dated April 12, 2005 and February 20, 1988; the declaration from [REDACTED] the affidavit of [REDACTED] dated March 4, 1988; the affidavit of [REDACTED] dated March 12, 1988; the affidavit from [REDACTED] dated March 12, 1988; the affidavit of [REDACTED] dated March 7, 1988; the declaration of [REDACTED]

1988; the declaration of [REDACTED] dated April 12, 1988; the declaration of [REDACTED] dated March 29, 1988; the declaration of [REDACTED] dated April 20, 1982; and the declaration of [REDACTED] dated February 20, 1988.

The applicant provided multiple documents related to the affiant [REDACTED] including an affidavit from [REDACTED] dated April 19, 2005 and a letter confirming [REDACTED] employment during the requisite period. In his affidavit, [REDACTED] stated that the applicant and his mother lived with her friend [REDACTED] and a roommate named [REDACTED] at an apartment at [REDACTED] [REDACTED] from November 1981 to June 1983. In June 1983 the applicant and his mother moved to the apartment of another friend named [REDACTED]. The affiant visited the applicant's mother occasionally in both locations. [REDACTED] stated that he worked for Velca Fashions Inc. [REDACTED] "on and [off] since 1981." However, the applicant also provided a letter from [REDACTED] President of Velca, dated April 14, 1988. The letter states that the affiant worked "in and out" of Velca factory since 1981. The letter also states that the affiant has been working for Mr. [REDACTED] at the Velca factory "on and off" from October 1987. This letter appears to be internally inconsistent and to be inconsistent with the affiant's statements in his affidavit, since the letter both confirms the affiant's employment on and off since 1981 and since October 1987 and the affidavit states that the affiant worked at Velca starting in 1981. This inconsistency calls into question the affiant's claim to have been in the United States during the requisite period and, as a result, also calls into question his claim to have first-hand knowledge of the applicant's presence in the United States during the requisite period.

The applicant provided multiple attestations from [REDACTED]. In the declaration dated April 20, 1982, which was printed on Burger King letterhead, the declarant is identified as a district supervisor of Burger King. The declarant stated that the applicant's mother was employed with Burger King from April 20, 1982 to August 30, 1982. Since the declaration is dated April 20, 1982, yet it claims to confirm the applicant's employment starting on that date and ending approximately four months later, the declaration is found to be internally inconsistent.

The applicant also provided an affidavit from [REDACTED] dated March 7, 1988. This affidavit explains that the affiant and the applicant and his mother were roommates from November 1981 to June 1983 at the [REDACTED] address. The affiant stated, "[s]ince the [applicant's mother] was one of my rooms made.[sic] I've [sic] used to see [the applicant's mother] at least once in a day [sic] . . . other [than] that I do not have any other activity with [the applicant's mother]." This affidavit is found to be inconsistent with the declaration from [REDACTED] dated April 20, 1982, where he indicated he had employed the applicant's mother in 1982, rather than that his only "activity" with the applicant's mother was as her roommate. In addition, later in the March 7, 1988 affidavit, the affiant stated that he has seen the applicant's mother on a daily basis since she became one of his roommates in November 1981. This statement appears to be inconsistent with the affiant's earlier statement in the same affidavit, where he indicated he saw the applicant's mother every day as her roommate from November 1981 to June 1983 and had no other activity with her. One statement indicates the affiant saw the applicant's mother daily from November 1981 to March 1988 when the affidavit was prepared. The other statement indicates the affiant saw the applicant's mother every day as her roommate from November 1981 to June 1983 and had no other activity with her. Both

this inconsistency and the prior identified inconsistency in this affidavit call into question Mr. [REDACTED] ability to confirm the applicant resided in the United States throughout the requisite period.

The applicant provided a third attestation from [REDACTED] dated April 22, 2005. In this affidavit, Mr. [REDACTED] stated that the applicant lived in the United States continuously from November 1981 to October 1988. The affiant explained that he knows the applicant because the applicant's mother's friend J [REDACTED] was the affiant's roommate, and the applicant and his mother lived with the affiant when they first arrived in the United States. The affiant neglected to mention or explain his claim in the 1982 declaration to have employed the applicant's mother at Burger King. This casts doubt on [REDACTED] statements confirming the applicant's residence during the requisite period.

The applicant provided multiple attestations from [REDACTED]. In the affidavit dated April 30, 2005, the affiant stated that the applicant came to the United States in November 1981 and lived at [REDACTED] with the affiant's friend [REDACTED]. The affiant stated that she used to see the applicant occasionally when she visited [REDACTED]. The affiant indicated that she lived with the applicant from June 1983 to October 1988 at [REDACTED]. The affidavit dated March 10, 1988 is consistent with the more recent affidavit from [REDACTED].

The applicant provided an affidavit from [REDACTED] dated April 22, 2005, in which the affiant confirmed the applicant and his mother lived with the affiant in the United States from November 1981 to June 1983. However, the affiant did not specifically confirm that the applicant resided continuously in the United States from June 1983 until the end of the requisite period.

The applicant provided an affidavit from [REDACTED] in which the affiant confirmed the applicant resided in the United States continuously from November 1981 to October 1988. The affiant provided the applicant's first New York address, but failed to provide the second address. Although the affiant explained that he visited the applicant's mother occasionally during the requisite period, the affiant failed to provide details regarding his frequency of contact with the applicant during the requisite period or explain how he is able to confirm that the applicant was living with his mother throughout the requisite period. The applicant also provided a letter from [REDACTED] president of Indian Super Market, stating that the affiant worked at this supermarket from April 1981 to November 1984.

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, and had not established that he met the continuous physical presence requirements for temporary resident status.

In summary, the applicant has not provided any contemporaneous evidence of his residence in the United States relating to the requisite period. He has submitted attestations that fail to specifically confirm the applicant resided in the United States during the requisite period or are internally inconsistent and inconsistent with other attestations. The affidavits of [REDACTED] dated April 12, 2005 and February 20, 1988; the affidavits of [REDACTED] dated April 12, 2005 and February 20, 1988; the declaration from [REDACTED] the affidavit of Jose

[REDACTED] dated March 4, 1988; the affidavit of [REDACTED] dated March 12, 1988; affidavit from [REDACTED] dated March 12, 1988; the affidavit of [REDACTED] dated March 7, 1988; the declaration of [REDACTED] dated April 7, 1988; the declaration of [REDACTED] dated April 12, 1988; the declaration of [REDACTED] dated March 29, 1988; the declaration of [REDACTED] dated April 20, 1982; and the declaration of [REDACTED] dated February 20, 1988 all fail to specifically confirm the applicant resided in the United States during the requisite period. The attestations related to [REDACTED] are internally inconsistent and inconsistent with each other. Two of the attestations of [REDACTED] are internally inconsistent or inconsistent with each other, and these inconsistencies cast doubt on the statements made in [REDACTED]'s third attestation.

The applicant provided an affidavit from [REDACTED] confirming his residence in the United States from November 1981 to June 1983, and affidavits from [REDACTED] and [REDACTED] confirming the applicant's continuous residence throughout the requisite period. These attestations provide some level of detail regarding the locations where the applicant was living and how he came to live at those particular locations. However, none of these attestations provide any unique detail regarding the affiant's frequency of contact with the applicant or knowledge of his activities and whereabouts during the requisite period. The affiants appear to be unable to provide any information regarding the applicant's circumstances of care during the requisite period. This is particularly significant considering that the applicant claims to have entered the United States when he was approximately two years old, but submitted no records of having attended school, and provided documentation of his mother's employment throughout the requisite period. None of the affidavits provided by the applicant offer any details regarding who, if anyone, was caring for the applicant when his mother was at work during the requisite period. Considering this lack of detail, and considering the inconsistencies found in the other attestations the applicant provided, the attestations of [REDACTED] and [REDACTED] are found to be insufficient to establish by a preponderance of the evidence that the applicant resided in the United States continuously throughout the requisite period.

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 in the documents provided by the applicant, and given his 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 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.