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FILE:

MSC 05 215 10217

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IN RE:

Applicant:

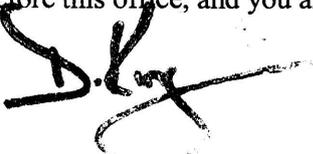
APPLICATION:

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. 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, Chicago. 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, on May 3, 2005. 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 for the applicant asserts that the director's decision was capricious, based on the evidence submitted. Counsel contends that the applicant submitted primary and secondary evidence pertaining to his residence in the United States for the duration of the requisite period sufficient to meet his burden of proof. Counsel notes that the director did not show, or even allege that the testimonial and documentary evidence submitted by the application was not complete credible and accurate, nor did he otherwise provide any evidence or argument attacking the credibility of the applicant's claims or evidence.

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).

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.* 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 (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. The AAO finds that the documents submitted provide credible evidence of the applicant's residence in the United States beginning prior to January 1, 1982, but are insufficient to establish his continuous residence thereafter.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 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 showed his addresses in the United States to be: (1) [REDACTED] in Chicago, Illinois from May 1978 to December 1979; (2) [REDACTED] in Chicago from December 1979 until October 1981; (3) [REDACTED] in Chicago from October 1981 to February 1987; and (4) [REDACTED] in Chicago from February 1987 until July 1989. At part #33 of the applicant's form I-687, where he was asked to list all of his employment in the United States since he first entered, he that he worked at [REDACTED] as a salesman from June 1978 until August 1984; at [REDACTED] as a salesman from September 1984 until August 1987; and at [REDACTED] as a salesman from October 1987 until April 1989.

The record contains the following documents submitted in support of the applicant's claim that he has continuously resided in the United States for the duration of the requisite period:

1. Color photocopies of an Illinois Identification Card issued to the applicant on December 29, 1978, and an Illinois Drivers License issued to the applicant on December 20, 1979.
2. A copy of the applicant's U.S. Social Security Card. The date of issuance cannot be determined, but it is noted that the card is printed on a version of Form OA-702 dated April 1976.

3. Copies of two savings account books (First National Bank of Chicago, Account # [REDACTED] showing the applicant's account activity from June 5, 1979 through December 15, 1980, and from December 19, 1980 through July 27, 1981, respectively.
4. Copies of customer statements issued to the applicant by the First National Bank of Chicago, dated August 12, 1982 and July 19, 1982, for two different 6-month certificates of deposit. The statements reference savings account number [REDACTED]
5. A notice dated November 10, 1980, from the First National Bank of Chicago, regarding a certificate of deposit number with a maturity date of May 20, 1981.
6. A copy of pages 6 and 7 of the applicant's Pakistani passport number [REDACTED] which bears a stamp indicating that he previously traveled on passport number [REDACTED] issued in New York on November 7, 1980.
7. Four original cancelled checks written by the applicant from an account with The First National Bank of Chicago (# [REDACTED] in March 1982, and a copy of a check written from this account in April 1982.
8. Three original envelopes addressed to the applicant's [REDACTED] address, bearing Pakistani stamps and postmarks. The envelopes have postmarks of April 1984, June 7, 1985, and August 3, 1985.
9. A First National Bank of Chicago Bank Statement for account number [REDACTED] issued to the applicant, for the period January 6, 1987 until June 30, 1987, and showing a balance of \$22.19.
10. A notarized letter from First National Bank of Chicago, dated July 3, 1990, indicating that the applicant has had a checking account with the bank since December 14, 1981, with a balance of \$225.70.
11. A notarized letter dated January 12, 2005 from [REDACTED], who states that he has known the applicant as a friend for the last 20 years and that he was introduced to him by a mutual friend.
12. A notarized letter dated January 12, 2005 from [REDACTED] who states that he first met the applicant in January 1984 at a community gathering, and that he has been good friends with him since that time.

It is noted that neither of these affiants have provided proof of their identity, evidence that they resided in the United States during the requisite time period, or a telephone number at which they can be reached for verification. Neither affiant states with any specificity how they date their initial acquaintance with the applicant, where or under what circumstances they met him, whether they have direct, personal knowledge of where the applicant was living during the requisite time period,

or how frequently they had contact with the applicant during the requisite period. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each affiant's claim to have a friendship with the applicant spanning 20 or more years. For these reasons, these affidavits have very limited probative value as evidence of the applicant's continuous residence in the United States since 1984-1985.

13. A letter dated April 28, 2003 from [REDACTED] president of [REDACTED] [REDACTED] states that the applicant worked in "our two branches" as a salesperson as follows: [REDACTED] September 1984 to April 1987; [REDACTED] October 1987 to April 1989; and [REDACTED] April 1992 to September 2000. Based on [REDACTED] statement, the applicant had a six-month gap in employment between April 1987 and October 1987. The applicant indicates that he worked for [REDACTED] from September 1984 until August 1987, before commencing employment with [REDACTED] in October 1987. This discrepancy has not been explained. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; his duties with the company; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded limited weight as evidence of the applicant's residence in the United States from September 1984 until the end of the requisite period.

Other than this letter, the applicant has not provided any evidence of his employment with [REDACTED] or [REDACTED]. The AAO finds this lack of evidence significant in light of the fact that the applicant does have a U.S. social security number issued prior to 1984 and claims to have maintained a bank account throughout the 1980s. These circumstances suggest that the applicant was not in a situation where he would have been paid in cash with no payroll or tax records maintained by himself or by his employer. The lack of documentary evidence related to this employment, viewed together with the noted deficiencies of the employment letter, raises questions regarding the credibility of the applicant's claim of employment.

There is one additional document in the record that appears to be a bank account book for account number [REDACTED]. The name of the bank and the name of the account holder are not identified. The document shows account activity from April 1983 through February 1984, followed by a deposit on July 6, 1990; however, since this document is not clearly associated with the applicant, it has no probative value and will not be considered.

The applicant was interviewed by a CIS officer on June 20, 2005. On August 8, 2005, the director issued a Notice of Intent to Deny (NOID) the application, advising the applicant that the evidence submitted did not meet his burden of proof to establish by a preponderance of the evidence that he resided in the United

States continuously for the duration of the requisite period. The director also noted that during his interview, the applicant provided dates of employment for a position at [REDACTED] which were inconsistent with dates provided on his Form I-687 application. Specifically, the applicant stated during his interview that he worked for this employer from 1990 to 1992, while the applicant stated during his interview that he worked for this company from 1989 to 1992.

In a response to the NOID received on September 19, 2005, counsel stated that the applicant made an honest mistake during his interview regarding his dates of employment with [REDACTED] and emphasized that the dates in question fall outside the requisite period. Counsel asserted that the applicant submitted primary and secondary evidence of his continuous residence sufficient to meet his burden of proof, and suggested that the director made no effort to examine such evidence prior to issuing the NOID. Counsel submitted copies of some of the above-referenced documents in support of the applicant's response.

The director denied the application for temporary residence on December 5, 2002. In denying the application, the director stated that the applicant had failed to overcome the allegations of the NOID. The director stated that further review of the required had been concluded, and that it was determined that the evidence was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, counsel for the applicant alleges that the director's reasons for denial of the application are capricious. Counsel again emphasizes that the applicant submitted primary evidence for the period from 1978 until 1982, as well as documents that may be accepted as secondary evidence, including the letter envelopes postmarked in 1984 and 1985, the affidavits of [REDACTED] and [REDACTED] and an employment verification letter. Counsel asserts that the applicant has adequate and substantial evidence of his presence, and contends that the director failed to consider all evidence submitted with the applicant's previous applications. Finally, counsel argues that the director "failed to show, or even allege, that the testimonial and documentary evidence submitted by the [applicant] was not completely credible and accurate."

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). In addition, 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). All relevant evidence in the applicant's record, including evidence submitted in support of the applicant's previous legalization applications, and the credibility and sufficiency of each piece of evidence, has been discussed herein. The applicant has not met his burden of proof and the denial was the proper result under the regulations

Here, the record contains sufficient primary evidence of the applicant's residence in the United States during the 1978 to 1982 period. However, the secondary evidence submitted to establish the applicant's residence

in the United States, particularly for the 1983 to 1988 period, is significantly lacking in probative value. There is no primary or secondary evidence suggesting that the applicant was in the United States in 1983. Such claim is based solely on the applicant's own testimony. The evidence submitted for 1984 and beyond consisted of two affidavits from third-party individuals, one employment verification letter, and three envelopes postmarked in 1984 and 1985. The affidavits and employment letter lack probative value for the reasons noted above, and the three envelopes, two of which are dated more than 14 months apart, are insufficient to establish the applicant's continuous residence during the 1984 to 1985 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 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 secondary evidence with minimal probative value for the 1983 to 1988 period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.