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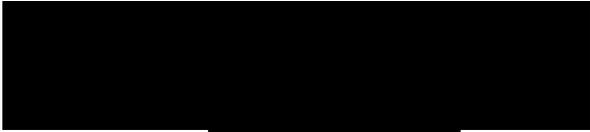
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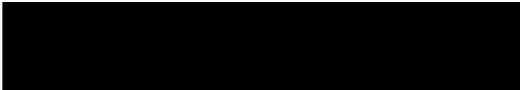
Date:

JUL 01 2008

MSC-05-320-12934

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. 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 "D. K. 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. 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 his claim of eligibility for temporary resident status and submits attestations as 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).

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 August 16, 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 his first address in the United States as [REDACTED], Brooklyn, New York, from July of 1981 to December of 1993. Similarly, at part #33, he listed his first employment in the United States to be for Babylon Construction Corporation from July of 1981 to December of 1992.

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

- A copy of an affidavit dated December 21, 2000 from [REDACTED] in which he stated that the applicant has been living with him at [REDACTED], Brooklyn, New York, from July of 1981 to December 1, 1993, and that he paid his portion of the living expenses with cash. Here, the affiant fails to indicate how he met the applicant and how they came to be living together. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States as he claimed.
- A copy of an affidavit dated August 12, 1999 from [REDACTED] in which he stated that he has known the applicant since 1983 and that the applicant came to the United States before 1982. Here, the affiant fails to demonstrate how he knew that the applicant has been present in the country since before 1982, when he met him in 1983. He fails to indicate when in 1983 he met the applicant and under what circumstances they met. The affiant fails to indicate the frequency

with which he saw and communicated with the applicant during the requisite period. The affiant failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A copy of an affidavit dated December 21, 1992 from [REDACTED] in which he stated he has known the applicant since 1982 and that the applicant visited him on a number of occasions. Here, the affiant fails to indicate when in 1982 he met the applicant and under what circumstances they met. He has failed to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of an affidavit from [REDACTED] in which he stated that he has been a close friend to the applicant since 1982 and that the applicant visited him on a number of occasions. He also stated that he worked with the applicant on construction jobs for different construction companies at different times. Here, the affiant fails to indicate when in 1982 he met the applicant and under what circumstances they met. He has failed to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. He has failed to specify the places or dates of the applicant's employment.
- A copy of an affidavit dated February 5, 1992 from [REDACTED] in which he stated that he has known the applicant since 1982, that the applicant has been present in the United States since 1980, that he entered the country before January 1, 1982, and that he has continuously resided in the United States. Here, the affiant has failed to establish that his statement is based upon his firsthand knowledge of the applicant's whereabouts or circumstances of his residence throughout the requisite period. The affiant has failed to indicate the frequency with which he saw and communicated with the applicant during the requisite period. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of an affidavit dated April 26, 1999 from [REDACTED] president of the Babylon Construction Corporation in which he stated that the company employed the applicant as a construction worker from July of 1981 to December of 1992, and that the applicant was paid in cash. The affiant also stated that the applicant had resided at [REDACTED], Brooklyn, New York. The letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the

claimed employment period. 8 C.F.R. § 245a.2(d)(3)(i). Here, the affiant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. In addition, the affiant fails to indicate when the applicant resided at the [REDACTED] address. Because this affidavit does not conform to regulatory standards and because it is lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- A copy of an affidavit dated August 27, 2006 from [REDACTED] in which he stated that he has known the applicant since 1981. Here, the affiant has failed to indicate where and how he met the applicant. He has failed to show the frequency with which he saw and communicated with the applicant during the requisite period. He failed to state how he dated his acquaintance with the applicant.
- A copy of an affidavit dated August 26, 2006 from [REDACTED] in which he stated that he has known the applicant since 1981. Here, the affiant has failed to indicate where and how he met the applicant. He has failed to show the frequency with which he saw and communicated with the applicant during the requisite period.
- A copy of an affidavit dated August 31, 2006 from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant resided at [REDACTED], Brooklyn, New York, from July of 1981 to August of 2006. This statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30, where he indicated that he resided at [REDACTED], Brooklyn, New York from July of 1981 to December of 1993. There has been no explanation given for this inconsistency. Because this affidavit is inconsistent with statements made by the applicant on his Form I-687 application, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted by the applicant were not corroborated by other evidence in the record, were not credible, or were not amenable to verification.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. He resubmitted copies of affidavits from [REDACTED] and [REDACTED]. He also submitted the following attestations:

- A copy of an affidavit dated October 21, 2006 from [REDACTED] in which he stated that he met the applicant in the United States in 1985 and that he has known him since. The affiant failed to state

how and where he met the applicant. He also fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A copy of an affidavit dated October 21, 2006 from [REDACTED] in which he stated that he met the applicant in 1981 in Manhattan, New York and that he has known him since. The affiant has failed to demonstrate how he met the applicant. He also fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period. This document appears to have been altered.
- A copy of an affidavit dated October 21, 2006 from [REDACTED] in which he stated that he met the applicant in 1981 in Brooklyn, New York and that he has known him since. The affiant has failed to demonstrate how he met the applicant. He also fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period. This document appears to have been altered.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the reasons for the director's denial. The statement made by [REDACTED] in his affidavit is inconsistent with statements that the applicant made on his Form I-687 application. The affidavit submitted by [REDACTED] does not conform to regulatory standards for attestations by employers. Overall, the affidavits submitted are lacking in detail and can therefore only be afforded minimal weight in establishing that the applicant resided in the United States during the requisite 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 documents that are inconsistent with his statements, fail to conform to regulatory standards, and are lacking in detail, 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.