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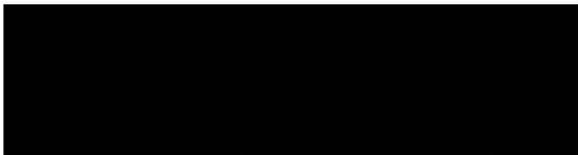
U.S. Department of Homeland Security
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U.S. Citizenship
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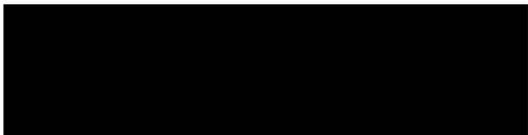
Office: NEW YORK

Date: JUL 17 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987, to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel states that the director's denial of the application was arbitrary and an abuse of discretion. Counsel submits a brief and additional documentation in support of the appeal.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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.* 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 from prior to January 1, 1982, through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987, to May 4, 1988.

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 June 16, 2004. At item #30 of the Form I-687 application, where applicants were asked to list all residences in the United States since first entry, the applicant stated that he lived at [REDACTED] in Brooklyn, New York from November 1980 to December 1983, and at [REDACTED] in Brooklyn from April 1984 to December 1989. In item #33, the applicant stated that he worked as a messenger at [REDACTED] in Brooklyn from January 1980 to October 1983; at a Citgo Gas Station, 3035 White Plain Road in Bronx, New York from November 1983 to October 1987; and at a Citgo Gas Station, 366 Avenue Y, West 3, in Brooklyn from October 1987 to December 1989.

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

1. A copy of a February 29, 1990, sworn statement from [REDACTED] in which he stated that the applicant worked for him from January 1980 to October 1983. The letter does not indicate whether the information regarding the applicant’s employment was taken from company records or the applicant’s address at the time he worked for [REDACTED], as required by 8 C.F.R. § 245a.2(d)(3)(i). The applicant did not submit documentation, such as pay stubs, canceled checks, or similar documentation to corroborate his employment with [REDACTED].
2. A copy of an April 5, 1990, affidavit from [REDACTED], in which he stated that the applicant had lived in the United States since January 1980. Mr. [REDACTED] did not indicate the basis of his knowledge about the applicant’s continued residence in the United States. Mr. [REDACTED] also stated that the applicant left the United States on August 20, 1987, and returned on September 26, 1987. In a copy of an April 2, 1990, sworn statement, Mr. [REDACTED] stated that the applicant resided at his address, [REDACTED] in Brooklyn, from April 1, 1984, to December 12, 1989.
3. A copy of a February 29, 1990, sworn statement from [REDACTED] in which he stated that the applicant rented a studio apartment at [REDACTED]’s house at [REDACTED] in Brooklyn from November 1980 to December 1983. The applicant submitted no documentary evidence,

such as a lease agreement, rent receipts, or similar documentation to corroborate his residence at this address.

4. A copy of a February 29, 1990, sworn statement from [REDACTED] DDS, in which he stated that the applicant was his patient from April 1981 to July 1983. The doctor did not indicate whether the information provided was taken from the applicant's medical records
5. A May 22, 2004, affidavit from [REDACTED] in which she stated that she had known the applicant since June 1981, and that she met him in Brooklyn, when he was lost and looking for directions. She stated that they have since become friends.
6. A May 22, 2004, affidavit from [REDACTED] in which she stated that she had known the applicant since October 1981, when she met him at a restaurant, and that they have since become friends.
7. A copy of a June 6, 2001, notarized "affidavit" from [REDACTED] in which he stated that he had known the applicant for at least 15 years, and that he met him while the applicant was working as a gas station attendant at the Citgo Gas Station at 366 Avenue Y in Brooklyn. Mr. [REDACTED] did not state how he dated his acquaintance with the applicant.

In a Notice of Intent to Deny (NOID) dated September 21, 2006, the director advised the applicant that CIS was unable to contact those who submitted statements on his behalf in order to verify their information. In response, counsel provided updated contact information for [REDACTED] and [REDACTED]. Counsel also stated that the applicant was unable to locate [REDACTED] or Dr. [REDACTED], and that CIS should take into consideration the length of time that has passed, making it difficult for the applicant to locate people who knew him during the qualifying period. Counsel also asserted that, based on a 1989 policy memorandum from the former director of the Eastern Regional Processing Facility of the Immigration and Naturalization Service (legacy INS), the applicant's application should receive minimal scrutiny because the applicant's affidavits were credible and verifiable. Counsel further asserted that the applicant's evidence had been treated differently from others in the same situation who submitted similar evidence.

The director determined that the applicant had failed to establish his continued residence in the United States and denied his application for adjustment of status on November 1, 2006. The director noted that [REDACTED] denied meeting the applicant in 1980, as he indicated in his 1990 affidavit, and that [REDACTED] told the interviewing officer that he met the applicant in 1984 when the two were roommates on [REDACTED]. The director also noted that the district office was unable to verify information from [REDACTED] or [REDACTED].

On appeal, counsel states that the interviewing office apparently misunderstood [REDACTED], and submits a December 16, 2006, sworn statement from [REDACTED], in which he reiterated that he had known the applicant since 1980. The record does not contain any notes from the interviewer memorializing the interview with [REDACTED] as such, there is no evidence that [REDACTED] made contradictory statements regarding his knowledge of the applicant. However, [REDACTED] did not indicate his relationship with the applicant or the basis of his knowledge of the applicant's residency in the United States prior to becoming his roommate in 1984.

Counsel asserts that the applicant provided affidavits that were credible and verifiable, and that the director "arbitrarily treated this Applicant's evidence different than other applicants who were in the same

situation and submitted similar evidence.” Counsel, however, submitted no documentation or other evidence to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, counsel suggests that the delay by CIS in attempting to contact those submitting statements on behalf of the applicant, contributed to the district office’s inability to verify their information. Nonetheless, the affiants failed to provide sufficient details to substantiate the information they provided without further verification. The applicant submitted no contemporaneous documentation to corroborate his employment or his residence addresses during the qualifying 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 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 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 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.

The record reflects that on July 2, 2001, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, for permanent resident status under the *Legal Immigration Family Equity (LIFE) Act*, under CIS receipt number MSC 01 275 60278. The District Director, New York, New York, denied the application on November 1, 2006. The applicant’s appeal of that decision is not at issue in this decision.

The record also reflects that on July 28, 2000, the applicant was convicted in the Criminal Court of New York of a violation of New York Penal Law section 240.20, disorderly conduct. He was ordered to attend a treatment readiness program and placed on probation for one year. Docket no. [REDACTED].

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility