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FILE:

MSC-04-329-11134

Office: NEW YORK

Date:

**JUL 22 2008**

IN RE:

Applicant:



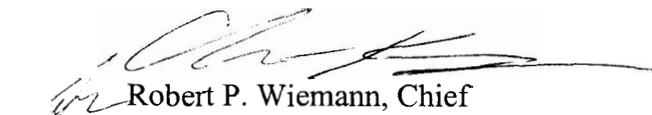
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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. 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.

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.

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 24, 2004. 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 first address in the United States to be in Brooklyn, New York from July 1981 until December 1986. At Part #33, the applicant listed no employment prior to October 1985.

The applicant submitted the following documentation:

- A declaration from [REDACTED], who stated that the applicant traveled from the United States to Ontario City in Canada to visit him from November 1987 until December 1987. The statement is not notarized and is not accompanied by identification and it lacks any details that would lend credence to the applicant’s claims of continuous residency. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, or how frequently he had contact with him. While the declarant’s statements do provide some evidence that the declarant traveled during the requisite period this statement has minimal probative.
- A form affidavit signed by [REDACTED] Ms. [REDACTED] stated that “in a social function at Brooklyn I was acquainted with [REDACTED] in the month of June,

1983.” Since the declarant refers to someone other than the applicant in this affidavit, it will be given no weight. Further, the fact that the applicant submitted this document in support of his application for legalization significantly undermines the credibility of the remaining evidence.

- An affidavit signed by [REDACTED] who stated that the applicant lived with him at [REDACTED] in Brooklyn, New York from January 1990 until 2000. The affiant claimed that the rent receipts and household bills were in his name and that the applicant contributed cash towards them. The affidavit does not include any evidence of the applicant’s residency or the affiant’s residency in the United States during the relevant time period that would corroborate his statements. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarant's claim to have been roommates for 10 years.
- A form affidavit from [REDACTED] who stated that the applicant worked with him from time to time. He also listed the applicant’s alleged addresses in the United States but does not provide any further details which would corroborate his statements. The statement lacks any details that would lend credibility to an alleged relationship with the applicant. The declarant did not indicate when he met the applicant, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value.
- A form affidavit from [REDACTED] who indicated that he resides at [REDACTED] Brooklyn, New York. He indicated that the applicant lived with him at the above mentioned address from July 1981 until December 1986. Like [REDACTED]’s statement above, the affiant claims that the rent receipts and household bills were in his name and that the applicant contributed cash towards them. The lack of detail regarding the events and circumstances of the applicant's residence is significant, and this affidavit will be given minimal weight.
- A notarized letter from [REDACTED] who indicated that the applicant lived with him at [REDACTED], Brooklyn, New York from December 1987 to December 1989. Again, this affiant claims that the rent receipts and household bills were in his name and that the applicant contributed cash towards them. The lack of detail regarding the events and circumstances of the applicant's residence is significant, and this affidavit will be given minimal weight.
- A letter dated September 2, 2003 from [REDACTED], which is printed on the letterhead of "A&D General Contractor" located in Brooklyn, New York. Mr. [REDACTED] stated that the applicant worked for his construction company as a painter from January 1986 through December 1991. 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; exact period of employment; 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 minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.**

- An employer declaration for special agricultural workers from [REDACTED] of Pompano, Florida. Mr. [REDACTED] indicated that the applicant worked for him in agricultural labor from May 1, 1985 until May 1, 1986. The affiant provides no additional information that would corroborate his claims and the applicant did not list a Florida address on his legalization application. For these reasons, this affidavit will be given minimal weight.
- A hospital record from Kings County Hospital in Brooklyn, New York which indicates that the applicant was discharged on May 13, 1986. This record does provide some evidence of the applicant's presence in the United States from April 25, 1986 (the date of admission to the hospital) until May 13, 1986 (the day of discharge).
- In conjunction with an earlier legalization application, the applicant submitted two additional pieces of evidence. First, a statement from [REDACTED] of Pompano Beach, Florida. Ms. [REDACTED] indicated that the applicant "stayed with me during his time of employment on Cook Farms." She does not indicate her address, provide any dates or any other information that would be probative of the applicant's residency in the United States during the statutory period. Also, the applicant did not list a Florida address on his application or mention employment with Cook Farms. Thus, this statement will be given no weight.
- Second, a letter from printed on [REDACTED] letterhead and signed by [REDACTED]. In this letter, dated August 23, 1988, Mr. [REDACTED] indicated that the applicant rented his mobile home from October 1985 until June 1986 and from August 1986 until December 1986. However, the applicant did not indicate on his legalization application that he lived in Florida at any time during the relevant period or after. He did not list an address in the United States between December 1986 and December 1987 and this discrepancy has not been explained. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support

of the application. The applicant has not provided any explanation regarding the inconsistent address information.

A review of the record revealed that the applicant previously filed a Form I-485 Life Act/Legalization application on February 15, 2002. In this application, on Form G-325A Biographic Information, the applicant specifically stated that he resided in Nonokali, Bangladesh from March 1951 until August 1985. This conflicts with the information that the applicant provided on his legalization application. In the instant application, he indicated that he entered the United States in July 1981 and left only once subsequent to his initial entry, in 1987. Thus, the applicant has admitted that he resided in Bangladesh until August 1985.

The director denied the application for temporary residence on January 26, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible and noted the inconsistencies in the applicant's applications.

On appeal, the applicant asserts that he has established his residence in the United States during the statutory period through the submitted affidavits.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to the requisite period, and he has submitted inconsistent testimony and evidence pertaining to his initial entry to the United States.

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).

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 affidavits with minimal probative value, and his own inconsistent statements on Forms I-687, 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.