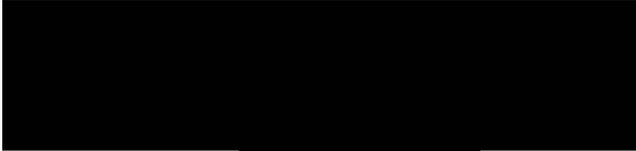


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FILE: [REDACTED]
MSC 05 312 12401

Office: LOS ANGELES Date: JUN 12 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:

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, Los Angeles, and that 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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 be 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. 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 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. 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* 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on August 8, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he resided at [REDACTED], Pacoima, California from September 1981 until June 1989. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he was self-employed from September 1981 until May 1985 and that he was employed by Hydro Plastics as a Supervisor from May 1985 until September 2003.

The applicant's administrative record also contains a Form I-687 application signed by the applicant on October 9, 1993. In connection with this application the applicant was interviewed under oath. In this interview, the applicant indicated that he first entered the United States in 1984. 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). The applicant has not provided any explanation regarding the inconsistent information provided on his 1993 and 2005 legalization applications. The inconsistency casts doubt on the reliability and sufficiency of the remaining evidence offered in support of the application.

The record also indicates that the applicant filed an I-485 Application to Adjust Status under the Life Act on September 15, 2001, including a G-325A Biographic Information form. On this form, applicants were asked to list all employers. The applicant indicated that he worked for La Mold Engineering from January 1982 until the time of filing in 2001. However, the applicant did not list this company as an employer on Part #33 of his legalization application. Also, the applicant submitted an employment verification letter from Hydro Plastics Inc. which indicates that he was employed with that company from June 1984 until March 1992 as a machine operator. The applicant has not explained the inconsistencies in the record regarding his employment. As stated above, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Since the applicant has not addressed the inconsistency, it also casts doubt on the reliability and sufficiency of the remaining evidence offered in support of the application.

Furthermore, the record of proceedings reflects that the applicant submitted evidence using the name "[REDACTED]." As such, the applicant has the burden of proving that he was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2). To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is "a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered includes affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2). Since the applicant failed to submit any evidence that the alias "[REDACTED]" properly refers to him, the credibility and probative value of the evidence submitted in any name other than [REDACTED] is substantially diminished.

In light of the inconsistent information provided, a review of the record reveals that the applicant submitted the following evidence in an attempt to establish continuous unlawful residence in the U.S. for the duration of the requisite period:

1. Three affidavits, from [REDACTED] and [REDACTED]. None of the affiants indicated that they had personal knowledge of when the applicant first entered the United States. None indicated that they have any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. They offered no specific information regarding how frequently and under what circumstances they saw the applicant during the relevant period, nor did they provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting with him. Additionally, all three affiants included an identical attachment listing the addresses of the affiant. The attached documents appear to have been prepared by the same person and do not provide evidence of the affiant's direct, personal knowledge of the applicant's addresses. Thus, the affidavits will be given nominal weight.

2. **An affidavit from [REDACTED]**. The affiant indicates that he is a permanent resident residing at [REDACTED], Pacoima, California. The affiant indicates that he met the applicant in 1981 while they were working construction together. He does not provide any additional relevant information that would support the applicant's claims that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the statutory period. Thus, this affidavit will be given little weight.
3. **An affidavit from [REDACTED]**. The affiant indicates that she is a U.S. citizen residing at [REDACTED], Pacoima, California. The affiant indicates that she met the applicant in 1981 through a client of the affiant's Avon cosmetics business. She does not provide any additional relevant information that would support the applicant's claims that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the statutory period. Thus, this affidavit will be given little weight.
4. **An affidavit from [REDACTED]**. The affiant indicates that she is a permanent resident residing at [REDACTED], Pacoima, California. The affiant indicates that she met the applicant in 1981 at a Thanksgiving celebration. Like the previous affidavits, [REDACTED] does not provide any additional relevant information that would support the applicant's claims that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the statutory period. Thus, this affidavit will be given nominal weight.
5. **Identical notarized declarations from [REDACTED] and [REDACTED]**. Both declarants indicated that they met the applicant in 1981, however, they provide no additional information regarding the applicant's residence in the United States or their personal knowledge of the same. Thus, these declarations will be given little weight.
6. **An affidavit from [REDACTED]** who states that she resides at [REDACTED], Pacoima, California. She indicates that she met the applicant at a party in December 1981 and that the applicant was a frequent customer of her beauty salon. She also indicates that she opened the beauty salon in 1985 but does not account for how often, if at all, she saw the applicant between the years between 1981 and 1985. She also fails to indicate that she has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. Thus, as stated above, this affidavit will be given little weight.
7. **An affidavit from [REDACTED]** who states that she resides in Arleta, California. She indicates that she met the applicant in December 1981 when he started to work with her husband at his business, L.A. Mold Maker. She states that the applicant worked with her husband "on and off" from 1981 until 2004. The applicant does not list L.A. Mold

Maker as an employer on his legalization application. Thus, as stated above, this affidavit will be given no weight.

8. A notarized letter from [REDACTED] who states that he resides in Pacoima, California. He indicates that he met the applicant in 1981 and that the applicant would perform yard work for him weekly. However, the declarant fails to indicate that he has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. He does not state the applicant's address in the United States during the relevant period or explain how he dates their initial acquaintance. Thus, as stated above, this affidavit will be given little weight.
9. An affidavit from [REDACTED]. The affiant indicates that he resides in Pacoima, California. The affiant indicates that he met the applicant in 1981 at a Thanksgiving celebration and that he hired him as a gardener. However, the applicant does not mention working for [REDACTED] on his legalization application and, like the previous affidavits, [REDACTED] does not provide any additional relevant information that would support the applicant's claims that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the statutory period. Thus, this affidavit will be given nominal weight.
10. An affidavit from [REDACTED]. The affiant indicates that she resides in San Fernando, California. The affiant indicates that she met the applicant in 1981. Like the previous affidavits, [REDACTED] does not provide any additional relevant information that would support the applicant's claims that he entered the United States prior to January 1, 1982 or that he resided continuously in the United States for the duration of the statutory period. Thus, this affidavit will be given nominal weight.

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 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 submitted inconsistent testimony and evidence pertaining to his employment in the United States during the requisite period.

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 his 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.