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U.S. Citizenship
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FILE: [REDACTED]
MSC-04-314-12736

Office: NEW YORK

Date: **JUN 19 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 be "R. P. 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.

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 9, 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 [REDACTED] Queens, New York, from June of 1981 to August of 1986; and [REDACTED], Queens, New York, from August of 1986 to 1990. Similarly, at part #33, he indicated that his first employment in the United States was as a self-employed handyman from June of 1981 to the present.

The record of proceeding contains the following attestations submitted by the applicant:

- An affidavit dated December 5, 2001 from [REDACTED] in which she stated that she has known the applicant for over thirty years, beginning in Ecuador. She also stated that when she heard that the applicant was coming to the United States in 1981, she offered him a place to stay at her home at [REDACTED] Corona, New York, for five years. The affiant stated that the applicant found a job at a bakery located at [REDACTED] in 1986. She further stated that they would visit each other often and that they attended the Ecuadorian festival once a year. Although she asserts that the applicant lived with her at the above noted address, she has failed to submit any corroborating evidence to substantiate this claim. Although not required, the affiant has failed to demonstrate that she herself was present in the United States throughout the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

- An affidavit dated December 5, 2001 from [REDACTED] in which he stated that he met the applicant in 1981 through his daughter. He further stated that the applicant rented a room from his daughter and that on many occasions they would have dinner together at his daughter's house or at his house. Here, the affiant fails to identify who his daughter is. He fails to specify the address where the applicant resided or the length of such residence. Because this affidavit is lacking in detail, it can be afforded little weight in establishing that the applicant resided in the United States throughout the requisite period.

The director noted in the Notice of Intent to Deny (NOID) the discrepancies found in the applicant's statements given during his interview with the immigration officer on July 18, 2005 concerning his employment in Ecuador, his wife's absence from the United States, and the birth of his children in Ecuador in 1981, 1985, and 1986 respectively. The director requested evidence from the applicant to demonstrate that he entered the United States prior to July of 1986.

In response to the NOID, the applicant stated that the interviewer erred in the statements. He further stated that he only worked for his father in Ecuador until he was 18 years old, not for 18 years. The applicant also stated that he married his wife in Ecuador in 1980, traveled to the United States in 1981, and that his wife traveled to the United States on many occasions resulting in her multiple pregnancies.

In denying the application the director noted that the applicant submitted his sworn statement that was inconsistent with his statements made during his immigration interview. The director also noted that in the absence of independent objective evidence to reconcile the inconsistencies, the applicant failed to demonstrate his continuous unlawful residence in the United States since prior to January 1, 1982.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and claims that the evidence found in the record is sufficient to substantiate such claim. He resubmits a copy of his sworn statement dated September 8, 2005, and copies of a certified mail receipt addressed to Citizenship and Immigration Services and a money gram dated August 25, 2006.

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 issues raised by the director. Furthermore, the affidavits that the applicant submitted are lacking in detail, and therefore, they can be accorded only minimal weight in establishing that he resided in the United States throughout the requisite period.

It is also noted that the applicant indicated on his Form G-325, Biographic Information dated December 8, 2001, that he was self-employed from June of 1981 to May of 1986, and employed by a bakery from May of 1986 to December of 1988. In contrast, he stated on his Form I-687 application, dated August 9, 2004, that he was self-employed from June of 1981 to the present. Similarly, the applicant indicated on his Form G-325 that he lived at [REDACTED] Queens, New York, from April of 1981 to November of 1986; and that he lived at [REDACTED] in New York from November of 1986 to December of 2001. In contrast, the applicant indicated on his Form I-687 application that he resided at [REDACTED]

██████████, Queens, New York, from June of 1981 to August of 1986; and that he lived at ██████████ in New York from August of 1986 to 1990. These inconsistencies call into question the verasisty of the applicant's claim of residing in the United States throughout the requisite period. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has failed to submit evidence to substantiate his claim.

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 inconsistence found in the statements made by the applicant and his 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 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.