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U.S. Citizenship
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FILE: [REDACTED]
MSC 06 098 25622

Office: Los Angeles

Date: MAR 03 2008

IN RE: Applicant: [REDACTED]

PETITION: 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant reiterates his claim of residence in this country since prior to January 1, 1982. The applicant asserts that the documents he submitted in support of his claim of residence in the United States are sufficient to meet his burden of proof in establishing by a preponderance of the evidence that he resided as claimed.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits 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.

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 entire 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 CIS on January 6, 2006. 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 [REDACTED] in Los Angeles, California from May 1981 to August 1985 and [REDACTED] in Los Angeles, California from August 1985 through at least the date of the termination of the original legalization application period on May 4, 1988. At part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry, the applicant listed employment as a subcontractor for [REDACTED] of Los Angeles, California from January 1981 to January 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted four photocopied receipts reflecting his payment to the Department of Water and Power for the City of Los Angeles for utility service provided to his residence at [REDACTED] in Los Angeles, California beginning October 16, 1985 through August 17, 1989.

The applicant provided documents from the State of California Department of Motor Vehicles that reflect he was first issued a California driver's license on July 9, 1984.

The applicant included a photocopy of an identification card from the Los Angeles Community Adult School for the 1985/1986 school year that contained the applicant's name and photograph.

The applicant submitted an affidavit signed by [REDACTED] [REDACTED] indicated that he and the applicant both lived at [REDACTED] in Los Angeles, California from May 1981 to August 1985. While [REDACTED] testified that he and applicant resided at an address that corresponded to the address of residence listed by the applicant for this period at part #30 of the Form I-687 application, he failed to provide any additional verifiable testimony such as the circumstances under which he and the applicant first met.

The applicant provided a photocopied receipt dated December 19, 1984 that reflected the applicant's payment of a \$50.00 deposit to the Department of Water and Power for the City of Los Angeles for utility service at [REDACTED]. As noted above, both the applicant at part #30 of the Form I-687 application and [REDACTED] in his affidavit testified that the applicant resided at [REDACTED] from May 1981 to August 1985. No explanation has been provided as to why the applicant was paying a deposit for utility service in December of 1984 at an address that he never claimed as an address of residence.

The applicant included two affidavits that are signed by [REDACTED] and were executed on September 14, 1989 and January 28, 2002, respectively. In the affidavit executed September 14, 1989, [REDACTED] declared that the applicant resided as a renter at [REDACTED], in Los Angeles, California from August 1985 through that date the affidavit was executed. In the affidavit executed on January 28, 2002, [REDACTED] reiterated that the applicant resided as a tenant at this same address from August 1985 until March 1992. While [REDACTED] testified to the applicant's residence in this country after August of 1985 in both affidavits, he failed to attest to the applicant's residence in the United States in that period from prior to January 1, 1982 up to August 1985.

The applicant submitted two affidavits that are signed by [REDACTED] and were executed on December 5, 1989 and April 14, 2003, respectively. In the affidavit date executed December 5, 1989, [REDACTED] asserted that he had knowledge the applicant was a self-employed contractor from 1981 to 1988 and indicated that he employed the applicant from January 1989 through the date this affidavit was executed. In the affidavit executed on April 14, 2003, [REDACTED] reiterated that he had knowledge that the applicant was self-employed contractor from 1981 to 1988 but failed to mention whether he himself had subsequently employed the applicant. However, [REDACTED] failed to state the circumstances under which he first met the applicant or the source of his knowledge relating to the applicant's employment in that period from 1981 to 1988. Further, it must be noted that the applicant testified that he was employed by [REDACTED] as a subcontractor from January 1981 to January 1988 at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since first entry. Although [REDACTED] testified that he employed the applicant after January 1989 in the affidavit executed on December 5, 1989, he failed to corroborate the applicant's testimony that [REDACTED] was his employer from January 1981 to January 1988 in either affidavit.

The applicant provided an affidavit dated January 28, 2002 that is signed by [REDACTED]. [REDACTED] asserted that he was the assistant pastor of the "Revival Center Tridestone Church of God in Christ" at [REDACTED] in Los Angeles, California. [REDACTED] noted that he had known and been acquainted with the applicant in the United States since 1981 as the applicant worked in the remodeling of the church from January 1981 to February 1982. [REDACTED] stated that

he and the applicant had remained friends since. However, [REDACTED] failed to provide any detailed verifiable testimony to substantiate the applicant's claim of residence in this country for the requisite period.

The applicant included two letters containing the letterhead of the 4th Revival Center Triedstone Church of God in Christ at [REDACTED] in Los Angeles, California both of which are signed by [REDACTED]. The letters are dated November 28, 2004 and December 31, 2004, respectively. In both letters, [REDACTED] repeated his previous testimony that he was assistant pastor of this church and he had known and been acquainted with the applicant in the United States since 1981 as the applicant worked in the remodeling of the church from January 1981 to February 1982. [REDACTED] reiterated that he and the applicant had remained friends since. It is noted that the letterhead of the letter dated November 28, 2004 did not list [REDACTED] as assistant pastor of the church and listed the telephone numbers of the church as [REDACTED] and residence as [REDACTED]. However, the letterhead of the letter dated December 31, 2004 did list [REDACTED] as assistant pastor of the church and listed the telephone numbers of the church as [REDACTED] and residence as [REDACTED]. The fact that two letters executed within thirty-three days contain letterheads with conflicting information relating to this church raises questions regarding the authenticity of such letters and the testimony contained therein. In addition, the probative value of [REDACTED] testimony in these letters is further diminished as he failed to provide any specific and verifiable information to corroborate the applicant's claim of residence in this country since prior to January 1, 1982.

In the notice of denial issued on December 11, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982. Specifically, the district director noted that the applicant failed to submit sufficient credible establish his residence in the United States in an unlawful status from prior to January 1, 1982 through 1984.

On appeal, the applicant reiterates his claim of residence in this country since prior to January 1, 1982. The applicant asserts that the documents he submitted in support of his claim of residence in the United States are sufficient to meet his burden of proof in establishing by a preponderance of the evidence that he resided as claimed. The applicant statements on appeal regarding the sufficiency of the evidence he submitted in support his claim of continuous residence in this country for the requisite period have been considered. Although the record contains sufficient evidence, including affidavits and contemporaneous documents, that tends to corroborate the applicant's claim of residence after July of 1984, the supporting documents relating to that period from prior to January 1, 1982 up to July 1984 lack sufficient detail, contain little verifiable information, and most importantly, contain conflicting testimony relating to critical components of the applicant's claim.

The absence of sufficiently detailed and credible supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 as required under section 245A(a)(2) of the Act. 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.