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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L,

[Redacted]

FILE:

MSC 05 153 10548

Office: NEW YORK

Date: MAR 10 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:

[Redacted]

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, and 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. More specifically, the director made adverse findings regarding the applicant's oral testimony and a letter submitted in support 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.

On appeal, counsel challenges the director's adverse findings in a statement dated September 11, 2006.

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). 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the record suggests that the applicant has not met this burden. To explain further, the applicant's initial supporting evidence regarding the requisite time period consisted of an undated letter from [REDACTED] claiming that he met the applicant in the winter of 1984 and an undated letter from [REDACTED] claiming that he met the applicant in June 1982 when the applicant was working at a video store. Although both individuals provided the residential address where the applicant claims to have resided from February 2004 to January 2005, neither provided any further information pertaining to the applicant's residence during the statutorily relevant time period.

With regard to counsel's statements in a letter dated February 22, 2005, which was also provided in support of the applicant's Form I-687, none of the supporting documents provided include a letter from [REDACTED]. Further, counsel stated that [REDACTED] attested to having personally known the applicant since July 1981. It is noted that the applicant does not claim to have commenced his residence in the United States until December 1981. Therefore, if [REDACTED] statement was meant to attest to the applicant's U.S. presence, any claim that contradicts the applicant's own statements would have no probative value in this matter. In the alternate, if [REDACTED] statement was meant to verify his knowledge of the applicant since prior to the applicant's entry into the United States, again his statement would have minimal probative value in corroborating the applicant's claimed U.S. residence. Lastly, counsel stated that the applicant entered the United States on October 12, 1981 without inspection. However, this statement is contradicted by the applicant whose residential history in the United States, as provided by the applicant in No. 30 of the Form I-687, starts with December 1981. The applicant maintains this claim on his Form G-325A, biographic information. In general, it is noted that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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). In the present matter, not only are counsel's assertions unsupported, but the claims that are brought forth by him and that are highly relevant to the subject of the applicant's eligibility differ significantly from claims made by the applicant himself. This considerable inconsistency further

compromises the credibility of the overall claim and casts doubt on any further statements made by counsel on the applicant's behalf.

That being said, counsel's February 24, 2006 response to the notice of intent to deny (NOID) dated February 2, 2006 falls far short of the documentation needed to overcome the adverse findings cited by the director. In the NOID, the director addressed the statements made by [REDACTED] in support of the applicant's claim. Specifically, as his statement is not notarized, the director properly noted that there is no evidence establishing [REDACTED] identity. The director also properly pointed out [REDACTED]'s failure to provide sufficient verifiable information to adequately demonstrate his knowledge of the applicant's residence in the United States during the time period in question. The AAO notes for the record, however, that the director erred in stating that [REDACTED] statements attest to the applicant's residence since prior to January 1, 1982. As noted previously in this decision, [REDACTED] only claimed to have met the applicant in June 1982 and, therefore, did not claim to know the applicant during the full statutory period, which commenced on January 1, 1982, i.e., five months prior to [REDACTED] claimed first encounter with the applicant. Lastly, the director commented on information provided by the applicant at his legalization interview during which time he stated that he departed the United States in January 1986 to return to Bangladesh and further claimed that he remained in Colombia until he returned to the United States in June of 1986. The director properly determined that an absence of this length is far greater than the 45 days allowed by regulation for any single absence during the statutory time period. *See* 8 C.F.R. § 245a.1(c).

With regard to the dates of the applicant's absence from the United States, counsel explains in his response that the applicant lacked sufficient knowledge of the English language and was therefore unable to accurately communicate necessary information. Counsel also referred to a lost visa page, which he claimed would have attested to the applicant's October 12, 1981 entry. This very statement suggests that the applicant's first entry into the United States was lawful. However, this dubious claim is directly contradicted by counsel's initial statement dated February 22, 2005 in which counsel stated that the applicant entered the United States in October 1981 without inspection.

Finally, while counsel relied heavily on the letter dated February 14, 2006 from [REDACTED] which was also submitted in response to the NOID, this submission was deficient as well. Specifically, while [REDACTED] claimed to have known the applicant since December 1981 and provided the applicant's place of employment where the two purportedly first met, he only attested to facts that suggest his knowledge of the applicant's residence in the United States directly prior to the statutory time period. [REDACTED] provided no information that pertained specifically to the statutory time period. Moreover, his statement lacks any further details that would lend credibility to an alleged 25-year relationship with the applicant.

After assessing the applicant's submissions, the director issued a denial dated August 30, 2006. The director addressed counsel's claim that the applicant's poor command of the English language resulted in inaccurate statements during the legalization interview. Specifically, the director pointed out that when applicants appear for their respective interviews, translators are offered to them at no cost. The director noted that the applicant in the present matter did not request a translator during any portion of the interview. On appeal, counsel denies that an offer of a translator was made and states instead that the

applicant did not know that this option was available to him. However, the veracity of counsel's statement has been considerably compromised by the unreliable statements previously made in this matter. As such the AAO is unable to give this additional unsupported claim any evidentiary weight.

The director also properly noted the various shortcomings of [redacted] statement, including the lack of evidence establishing [redacted] identity and residence in the United States during the relevant time period. However, counsel fails to address these deficiencies on appeal.

Finally, the director concluded that the applicant's claimed absence from January to June of 1986 interrupted any continuous residence he may have otherwise established. An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). In the present matter, the applicant merely retracts previously made statements by presenting new statements from counsel, whose own credibility is dubious at best. It is noted that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. While this alone would not merit an adverse conclusion regarding the applicant's eligibility, the non-contemporaneous evidence submitted in the present matter lacks the necessary probative value to support the applicant's claim. 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 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 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-*, 20 I&N Dec. 77. 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.