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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

PUBLIC (C)

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FILE:

MSC-05-174-10682

Office: NEW YORK

Date: MAR 10 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:



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.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his continuous unlawful residence in the United States.

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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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 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 March 23, 2005. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the applicant indicated that he was absent from the country from January of 1982 to April of 1982 when he traveled to Panama in response to a family emergency, and again from November of 1987 to January of 1988. It is noted that the record of proceeding contains the applicant's Form I-687, signed and dated September 3, 1991, in which the applicant did not indicate at part #35 that he was ever absent from the United States in 1982. During his interview with Citizenship and Immigration Services (CIS) on February 28, 2006, the applicant stated under oath that he was absent from the United States from January 12, 1982 to January 21, 1982 when he traveled to Mexico, and from March to April of 1982 when he traveled to Mexico. Because the record contains conflicting statements, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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 (BIA 1988). Here, the applicant has failed to provide a clear explanation for the inconsistencies.

The applicant initially submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1980/1981, and they list the applicant's residence since 1980. There is nothing in the record to demonstrate the frequency with which the affiants maintained communications with the applicant. Here,

the affiants have not provided evidence that they themselves were present in the United States throughout the requisite period. There is nothing in the record to demonstrate that the information in the affidavits was based upon firsthand knowledge. Though not required to do so, the affiants have not included proof of their identity with their affidavits. Although the affiants attested to the applicant's residence in the United States since 1980, they have failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavits are lacking in detail and are not amenable to verification, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted the following attestations:

- A letter from [REDACTED] manager of [REDACTED] in which he stated that the company employed the applicant as a waiter from August of 1980 to July of 1985.
- A letter from [REDACTED] dated March 30, 2006, in which he stated that he was the owner of [REDACTED] and president of [REDACTED]. He further stated that he has known the applicant for over 36 years and that he hired the applicant to work in his business.
- A letter from [REDACTED] banquet manager of [REDACTED] in which he stated that the club has employed the applicant since 1986.

The letters do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the address(es) where the applicant resided throughout the claimed employment periods. 8 C.F.R. § 245a.2(d)(3)(i). It is further noted that the NYS Department of State, Division of Corporations records show that the initial DOS filing date for [REDACTED] was June 19, 1984. In addition, the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarants.

In response to the Notice of Intent to Deny (NOID) the applicant submitted the following attestations:

- A letter from the NYNB Bank, formally Bankers Thrust, in which the customer service representative stated that the applicant opened a savings account with Bankers Thrust from 1980 to 1984. Here, there has been no independent documentary evidence provided to substantiate this claim. It is also noted that the applicant stated during his interview with CIS that he has had a bank account since 1985. Therefore, the attestation can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] in which he stated that the applicant was seen as a patient at his office in New York City from 1983 to 1984. There has been no independent

documentary evidence provided to substantiate this claim. It is further noted that the attestation does not support the applicant's claim of residence in the United States since prior to January 1, 1982. Therefore, the attestation can be accorded only minimal weight in establishing that the applicant resided in the United States from 1983 to 1984.

- Affidavits from [REDACTED] and [REDACTED] in which they stated that they are the applicant's sisters, that he has been in the United States since 1980, and that they have been in close contact with him. Here, the affiants have failed to specify the frequency with which they saw the applicant during the requisite period. The affiants have not provided evidence that they themselves were present in the United States throughout the requisite period. Although the affiants attested to the applicant's residence in this country since 1980, they failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavits are significantly lacking in detail they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that based upon the information contained in the applicant's passport, and other documentation submitted, it was evident that he had failed to establish continuous unlawful residence in the United States throughout the statutory period. The director also noted that the affidavits and letters submitted by the applicant were insufficient because they contained discrepancies, inconsistent statements, and were not corroborated by sufficient documentary evidence.

On appeal, counsel asserts that the applicant stated during his interview with CIS that he had made a few short trips outside the United States, but had been continuously residing in the country since 1982. Counsel further states that the letters and affidavits submitted by the applicant are sufficient to show that he was living in the United States during the requisite time period.

On appeal the applicant submits English translated copies of [REDACTED] and [REDACTED]'s birth certificates. This evidence is not sufficient to overcome the director's denial or to demonstrate the applicant's continuous unlawful residence during the requisite period.

The applicant also submits a letter dated August 12, 2006, from [REDACTED] in which he states that the company known as [REDACTED] has ceased to exist, that there is no documentation to corroborate the applicant's employment with the company, and that to the best of his knowledge, the applicant was an employee of the previous owner and he received his wages in cash. Here, it appears that the declarant's statement with regards to the applicant's employment is not based upon firsthand knowledge. It is also noted that the letter does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, the exact period of employment, periods of layoffs, duties with the company, or whether the information was taken from official company records.

8 C.F.R. § 245a.2(d)(3)(i). Therefore, the statement can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In summary, the applicant has not submitted any evidence on appeal sufficient to overcome the director's denial. Although counsel makes statements with reference to the issues addressed by the director, there has been no independent corroborating documentation presented to support the assertions. Without documentary evidence to support the claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Here, the applicant has not provided any contemporaneous evidence of residence in the United States throughout the requisite period. The applicant has failed to meet his burden of proof, and has failed to overcome the grounds for the director's denial, in that he has not provided tangible evidence or credible documentation to attest to his claimed presence in the United States during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous unlawful residence throughout the 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 contradictory statements 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.