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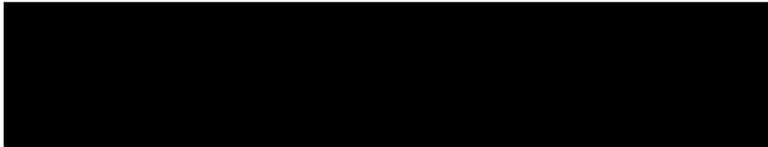
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FILE:

MSC-05-007-10687

Office: NEW YORK

Date: MAR 10 2008

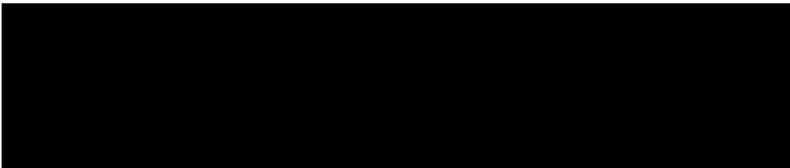
IN RE:

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, the applicant asserts that he demonstrated his eligibility for temporary resident status during the course of his interview with Citizenship and Immigration Services (CIS). He further asserts that the information he provided during his interview and that which he submitted on his Form I-687 application are the same; and that he adequately responded to the director's Notice of Intent to Deny (NOID).

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 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 October 7, 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], New York, New York, from January of 1982 to January of 1990. Similarly, at part #33, he showed his first employment in the United States to be as a street vendor in New York City from January of 1982 to December of 1995. It is noted that the applicant failed to indicate that he has lived in the United States before January 1, 1982.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1982, and that he knows the applicant to be modest, humble, honest, and trustworthy. Here, the affiant fails to indicate how he met the applicant, where he met the applicant and whether or not he met him in the United States. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to knowing the applicant since 1982, he failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated June 13, 2005 from [REDACTED] in which the manager stated that the applicant has leased a New York City Taxi Cab from the company "for a long time." The letters do not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's address(es) at the time of his employment, the duration of the applicant's employment, periods of layoffs, or whether the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, 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 declarant.

The applicant also submitted copies of his employment authorization card, social security statement of earnings, and a copy of his child's birth certificate issued by the State of New York. However, this evidence is dated subsequent to the requisite period and therefore, is not supportive of the applicant's claim of continuous unlawful residence in the United States since before January 1, 1982. The applicant also submitted a copy of his passport issued to him on June 3, 1965.

In response to the director's NOID request for additional evidence dated August 10, 2005, the applicant submitted an affidavit from [REDACTED] in which he stated that he has known the applicant since late 1981. The affiant submitted a copy of his social security card and North Carolina Commercial Drivers License issued to him in March of 2002. Here, the statement made by the affiant is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he was asked to list all residences in the United States since first entry, and he in-turn indicated that he resided [REDACTED] in New York City from January of 1982 to January of 1990. Similarly, the applicant listed at part # 33 of his I-687 application that his first employment in the United States was as a vendor from January of 1982 to December of 1995. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the affidavit. 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). The affiant fails to indicate how he met the applicant, where he met the applicant and whether or not he met him in the United States. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to knowing the applicant since late 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because of its significant lack of detail and because it conflicts with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to meet his burden of proof by a preponderance of the evidence that he continuously resided in an unlawful status in the United States throughout the requisite period.

On appeal, the applicant states that he demonstrated his eligibility for temporary resident status during his interview with CIS officers, through the information he provided on his Form I-687 application, and through the attestations submitted in response to the director's NOID. The applicant does not submit any additional evidence.

In the instant case, although the applicant's testimony is evidence to be considered in determining his eligibility, in order to meet his burden of proof, the applicant would have to provide corroborating evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6) and *Matter of E- M--*, *supra*. Here, the applicant has not provided any contemporaneous evidence of residence in the United States during the requisite period. It is further noted that the applicant has submitted attestations that are in conflict with his Form I-687 application information and are significantly lacking in detail. The manager from [REDACTED] fails to specify the applicant's dates of employment. [REDACTED] fails to specify when in 1982 he first met the applicant and the duration of their relationship. It is also noted that the statement made by [REDACTED] is inconsistent with the applicant's statement on his Form I-687 application and the affiant fails to specify the circumstances leading to his acquaintance with the applicant and the frequency in which he communicated with him. Finally, none of the declarants indicated in their statements knowledge of the applicant's place of residence during the requisite period.

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 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.