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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 05 053 10405

Office: New York

Date: **MAR 12 2008**

IN RE:

Applicant:



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:



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, New York, New York, 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 during the requisite period. The applicant contends that he did not possess any further documentation to support his claim of residence in this country since prior to January 1, 1982 because he was an undocumented alien during the period in question.

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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 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 November 22, 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 indicated he resided at [REDACTED] in Woodside, New York from September 1981 to July 1984 and [REDACTED] in Elmhurst, New York from July 8, 1984 to October 1, 1990. At part #33 of the Form I-687 application where applicants were asked to list all employment since January 1, 1982, the applicant listed employment as a cashier for [REDACTED] in Brooklyn, New York from September 1981 to November 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] stated that he had been a friend of the applicant since the applicant arrived in the United States in July 1981. [REDACTED] noted that the applicant had lived with him at [REDACTED] in Woodside, New York from September 1981 to 1984 and [REDACTED] in Elmhurst, New York from 1984 until June 1990. While [REDACTED]

indicated that he lived with the applicant at the same addresses of residence listed by the applicant on the Form I-687 application, he failed to offer provide any lease agreements, rent receipts or utility bills that would tend to demonstrate that he and the applicant had lived together at these residences.

The applicant included a letter containing the letterhead of [REDACTED] in Brooklyn, New York that is signed by [REDACTED]. In his letter, [REDACTED] declared that the applicant worked for this enterprise as a cashier from September 1981 to November 1989. However, [REDACTED] failed to provide either the applicant's address of residence during that period he was employed by [REDACTED] or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided two affidavits signed by [REDACTED] and [REDACTED] respectively, who stated that they had known the applicant as a friend since July 1981 in the former's case and August 1981 in the latter's case. Both affiants attested to the applicant's absence from the United States when he traveled to Canada from July 20, 1987 to August 15, 1987, as well as additional absences from this country after the termination of the legalization application period on May 4, 1988. While both affiants observed that they had known the applicant for over twenty years, neither affiant offered any specific verifiable testimony that would tend to substantiate the applicant's claim of residence in this country for that period in question.

The record shows that the applicant appeared for an interview at the CIS office in New York, New York, on August 25, 2005. However, the notes of the interviewing officer consist of a one page pre-printed form that did not reveal the specific content of the questions presented to the applicant and the responses he provided during this interview and must be considered as skeletal in nature. As a result, the interviewing officer's conclusion that the applicant had made false statements during the interview cannot be viewed as being supported by the evidence contained in the record.

In the notice of intent to deny issued on April 21, 2007, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by noting that he had failed to submit sufficient credible evidence of residence. In addition, the district director noted that the applicant had provided contradictory testimony relating to his claim of residence in this country for the requisite period at his interview. However, as discussed previously, the evidence in the record relating to the applicant's testimony at his interview on August 25, 2005 is skeletal in nature. Although the notice contained over two pages of specific questions purportedly asked by the interviewing officer and the responses provided by the applicant during this interview, the record does not contain any contemporaneous account of these questions and responses. Further, the record does not contain sufficient documentation to establish that the applicant made false statements in attempt to commit fraud or make material misrepresentations specifically related to his claim of residence in the United States for the requisite period. Regardless, the district director's conclusions regarding the effect of testimony provided by the applicant must be considered as harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(b). The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which he reiterated his claim of residence in this country for the requisite period.

The district director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on June 16, 2007.

On appeal, the applicant declares that he does not possess any further documentation to support his claim of residence in this country since prior to January 1, 1982 because of his status as an undocumented alien. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant was purportedly residing in this country as an undocumented alien, such status is insufficient to explain the fact that the evidence in the record lacks sufficient detailed verifiable information to corroborate the applicant's claim of residence in the United States for the requisite period.

The absence of sufficiently detailed supporting documentation seriously limits the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 May 4, 1988 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.