



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of privacy

PUBLIC COPY

L1

[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

MAY 19 2008

MSC-05-361-10809

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 the applicant's claim of eligibility for temporary resident status.

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).

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) 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; 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 September 26, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] dated September 21, 2001, in which he stated that he has known the applicant since 1981 and that they met at his friend's place of business. He further stated that he and the applicant frequently met on the street and often speak with one another. The applicant fails to specify the name of his friend or his company name. Although not required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's residence in this country since 1981, he has 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 since prior to January 1, 1982. Because the 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.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981, and that he rented an apartment to the applicant from August of 1985 to June of 1989. The affiant has failed to specify the frequency with which he saw the applicant throughout

the requisite period. Although not required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon his firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. Because the 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.

- An affidavit from [REDACTED] dated October 10, 2003, in which he stated that he has known the applicant since 1981 when the applicant lived in Brooklyn, New York. He also stated that he and the applicant would meet at a community center and at home. The affiant has failed to specify where he met the applicant. He has failed to specify the frequency with which he saw the applicant throughout the requisite period. Although not required, the affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's residence in this country since 1981, he has 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 since prior to January 1, 1982.
- A letter from [REDACTED] of Mision San Juan Bautista, in the Bronx, New York, in which she stated that she has known the applicant since the fall of 1981, when her husband invited the applicant to their home. She further stated that the applicant has visited with them on a number of occasions. Although the affiant attested to the applicant's residence in this country since 1981, she has 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 since prior to January 1, 1982.
- A letter from [REDACTED] typed on a prescription form and dated April 23, 1988, in which he stated that the applicant has been his patient since 1981. He also submitted a copy of a medical prescription dated March 10, 1982. Here, the declarant fails to submit supporting evidence sufficient to substantiate his claim such as medical records.

In the Notice of Intent to Deny (NOID), the director determined that the applicant had submitted affidavits that were not verifiable and could not be used as credible evidence.

In response to the director's NOID, the applicant submitted the following attestations:

- An affidavit from [REDACTED] dated April 13, 2006, in which the affiant stated that she has personally known the applicant since 1981 and that he and the applicant met occasionally. She further stated that she rented her apartment at [REDACTED] South Ozone Park, New York, to the applicant from August of 1985 to June of 1989. The affiant submitted photocopies of her New York State Driver License and Group Family Day Care License. Here, the affiant fails to submit corroborating evidence such as a lease agreement,

rent receipts, or cancelled checks to substantiate her claim. There is no evidence to demonstrate that she herself was present in the United States throughout the requisite period.

- An affidavit from [REDACTED] dated April 22, 2006, in which he stated that the applicant is his family friend. Here, the affiant fails to state when and where he met the applicant. Although not required, he fails to demonstrate that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's residence in this country since 1981, he has 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 since prior to January 1, 1982. Because the 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 from [REDACTED] of Mision San Juan Bautista dated April 18, 2006, in which she stated that she has known the applicant since the fall of 1981 and that he has visited with her family many times throughout the years. She states that she received a call from an immigration officer, but was incoherent because she was medicated. She submits copies of a patient agreement, Blue Cross Blue Shield hospital statement, a Diocese of New York identification card, and United States passport. Here, the declarant fails 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 since prior to January 1, 1982. Because the declaration 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.

In denying the application the director noted that the district office's attempts to contact the affiants were to no avail. The director also noted that the applicant was responsible for providing verifiable affidavits and documentation in support of their claim. She also stated that the affiants have failed to provide proof that they possess direct personal knowledge of the events and circumstances surrounding the applicant's entry and residence in the United States.

On appeal, counsel asserts that the director should have used alternative methods to contact the affiants to verify their information. Counsel further asserts that the director ignored the adjudication standards and wrongfully denied the application. Counsel also asserts that the director failed to consider the totality of all of the evidence and testimony in determining the applicant's credibility and eligibility for temporary resident status. The applicant does not submit any evidence on appeal.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. Although counsel asserts that the director erred in denying the application because she failed to use alternative methods of contacting affiants, ignored the adjudication standards in adjudicating the application, and failed to consider the totality of all of the evidence and testimony, it is the applicant's responsibility to provide verifiable affidavits and documentation in support of their claims. The applicant submitted affidavits in

response to the director's NOID that were not amenable to verification. The record of proceeding demonstrates that the multiple efforts made by the director to contact affiants were to no avail. Here, the applicant has failed to demonstrate by a preponderance of the evidence that he has resided in the United States in an unlawful status throughout the requisite period.

It is noted that the applicant has been inconsistent in his statements concerning his absences from the United States. The applicant indicated on his Form I-687 applications dated April 23, 1990 and September 26, 2005, at part #32 that he was absent from the United States in July of 1987. In contrast, the applicant stated during his interview with immigration officers on January 8, 2004 that he was married in Pakistan in 1983 and that his wife didn't come to the United States until 1988. He has also indicated on his Form I-687 at part #32, dated April 23, 1990, and Form I-485, Application to Register for Permanent Resident of Adjust Status, part # 3.B, dated October 5, 2001, that his two daughters were born in Pakistan on January 18, 1984 and June 2, 1985. There has been no explanation given by the applicant for these inconsistencies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts 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, 591-92 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

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 contradictory statements on his applications 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.