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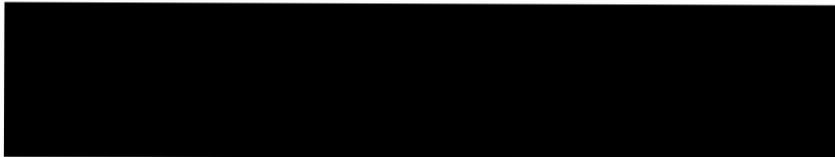
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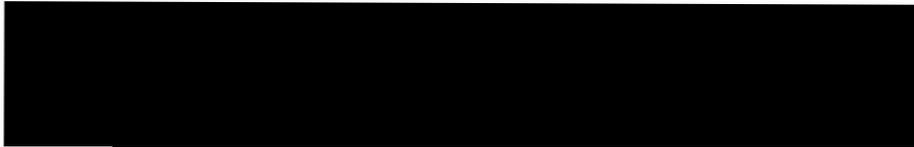
Applicant:



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. 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, Chicago. 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 August 23, 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 that he resided at [REDACTED] in Jamaica, New York, from 1981 to 1985; and that he resided at [REDACTED], Jamaica, New York, from 1985 to July of 1989. Similarly, at part #33, the applicant indicated that he was a helper at A.K. Enterprises located in New York from 1981 to 1985; and that he was employed as a helper at Saga Water Proofing Company from September of 1986 to August of 1989.

In an attempt to establish his eligibility for temporary resident status, the applicant submitted the following employment attestations:

- An updated letter and a letter dated April 20, 2003 from [REDACTED] of A.K. Enterprises Company in which he stated that the company employed the applicant from 1981 to 1985. These letters are inconsistent with the information provided by the applicant on his Form I-687 dated August 13, 1990, at part #33 where he indicated that he was self-employed as a perfume sales person from November of 1980 to July of 1986. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 dated August 13, 1990, doubt is cast on the assertions made. Doubt cast on any aspect of the applicant's proof may, of course, 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. 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, 591-92 (BIA 1988). In addition, the declaration does 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, 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, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration conflicts with statements made by the applicant on his Form I-687, and because it does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter dated April 19, 2003 from [REDACTED] of Saga Waterproofing Company in which he stated that the company employed the applicant as a helper, on a part-time intermittent basis, from September of 1986 to June of 1989. Mr. [REDACTED] also stated that the applicant was employed on an as needed basis and that he would work a few months in total each year. He further stated that he did not have any payroll records for the applicant because he was hired on an as needed basis and that the company has since closed. Here, the declaration does 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 or the origins of the information provided. 8 C.F.R. § 245a.2(d)(3)(i). The declarant indicates that there are no company records relating to the applicant's employment therefore, the authenticity of his statements are at issue. Because this declaration does not conform to regulatory standards, and is lacking detail and probative value, it 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 in an effort to establish his residency during the requisite period:

- An affidavit from [REDACTED] in which he stated that he shared accommodations with the applicant at [REDACTED], Jamaica, New York, from 1981 to 1985. Here, the statement is inconsistent with the applicant's statement on his Form I-687 dated August 13, 1990, at part #30 where the applicant lists his address as [REDACTED], Jamaica, New York, from August of 1980 to July of 1989. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 dated August 13, 1990, doubt is cast on assertions made in the attestation. It is further noted that the affiant has failed to submit corroborating evidence to substantiate his claim. Although not required, he has failed to demonstrate that he himself was present in the United States throughout the requisite period. Because this letter conflicts with other evidence in the record and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States since prior to January 1, 1982.

- An affidavit dated April 27, 2003 from [REDACTED] in which he stated that he has known the applicant since 1984 and that the applicant lived with him as a roommate at [REDACTED] Chicago, Illinois, from October of 1984 to December of 1984. Here, the statement is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he lists his address [REDACTED], New York from 1981 to 1985; and on his Form I-687 dated August 13, 1990 he lists his address as [REDACTED], Jamaica, New York, from August of 1980 to July of 1989. It is further noted that there is no evidence in the record to demonstrate that the applicant lived in Chicago, Illinois before 1989. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application and Form I-687 dated August 13, 1990, doubt is cast on assertions made in the attestation. Because this affidavit conflicts with other evidence in the record it cannot be accorded any weight in establishing that the applicant resided in the United States since prior to January 1, 1982.
- An affidavit dated August 1, 1990 from [REDACTED] in which he stated that he shared accommodations with the applicant at [REDACTED] Jamaica, New York, from September of 1986 to August of 1989. Here, the affiant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he lists his address as [REDACTED] Jamaica, New York from 1985 to July of 1989; and on his Form I-687 dated August 13, 1990 he lists his address as [REDACTED], Jamaica, New York, from August of 1980 to July of 1989. These multiple inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application and Form I-687 dated August 13, 1990, doubt is cast on assertions made in the attestation.

The applicant also submitted the following attestations:

- A declaration dated July 2, 2001 from the president of Centro Sin Fronteras (a non-profit organization) in which she stated that the applicant has been an active participant through a coalition of immigrant groups in both New York and Chicago for the legalization of late amnesty applicants since 1986. This statement is inconsistent with the applicant's Form I-687 application, at part #31 where he was asked to list all affiliations and associations with churches, organizations, or clubs. The record shows that the applicant responded to that question by stating "none." This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made by the declarant. The declarant's statement conflicts with other evidence in the record, hence, very minimal weight can be afforded to this declaration in establishing that the applicant resided in the United States during the requisite period.
- A handwritten declaration from [REDACTED] D. dated August 14, 2001, in which she stated that the applicant has been under her care since 1986. Also included were copies of a patient

information sheet dated March of 1986 and a patient service record with dates including March 16, 1986 and April 28, 1986. While this may be evidence of the applicant's visits to the declarants' office in 1986 for medical treatment, it is insufficient to demonstrate his residence in the United States before that year or his presence in the country since that year. Because this declaration is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States since prior to January 1, 1982.

The applicant submitted the following attestations from acquaintances:

- An affidavit from [REDACTED] in which he stated that he has known the applicant as a friend since 1980.
- An affidavit dated August 1, 2001 from [REDACTED] in which he stated that he has known the applicant as a friend since 1983 and that they met through personal contacts.

An affidavit from [REDACTED] in which he stated that he has known the applicant since 1984 when they met during his visit to his friend, [REDACTED] house. He also stated that through the years he has developed a close relationship with the applicant and that the applicant has frequently visited with his family.

- An affidavit dated February 17, 2003, from [REDACTED] in which he stated that he has known the applicant since 1985 and that they have become good friends.

Here, the affiants have failed to specify the frequency with which they communicated with the applicant during the requisite period. Although not required, the affiants have not provided evidence that they themselves were present in the United States throughout the requisite period. Here, the affiants attested to knowing the applicant during the requisite period however, they have failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. The affiant [REDACTED] failed to specify when in 1980 he first met the applicant, and where. There is no evidence in the record to demonstrate that [REDACTED], [REDACTED] or [REDACTED] knew the applicant prior to January 1, 1982. Because the affidavits are lacking in detail and probative value, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted letters postmarked November of 1982, May of 1983, March of 1986, June of 1987, and October of 1987. The letters were addressed to the applicant, in-care-of [REDACTED] at [REDACTED]

Jamaica, New York. Here, the information is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he listed his address to be [REDACTED] Jamaica, New York, from 1981 to 1985. 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 also noted that the envelopes were not addressed directly to the applicant therefore, they can be accorded only

minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

In denying the application the director noted that the applicant had failed to submit sufficient evidence to establish his eligibility for temporary resident status. The director also noted that it appeared that the letter from Ritz-Carlton Chicago dated July 20, 1990 was a forgery, in that no one from the hotel's human resource department was able to identify the writer as a former employee.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to qualify him for temporary resident status, and that the letter from the Ritz-Carlton Chicago was written too long ago for any current employee to remember the writer. The applicant does not submit any evidence on appeal. It is noted that counsel indicated on the appeal Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, dated October 26, 2006, that he would be submitting an additional brief within 30 days. To date, the AAO has not received any additional documentation from counsel in relation to this appeal. It is also noted that the AAO has made several attempts to contact counsel by phone, to no avail.

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. He has failed to overcome the issues raised by the director. Although the Ritz-Carlton letter is dated subsequent to the requisite period, the possibility of it being a forgery brings into question the applicant's credibility. The employment letters noted above do not conform to regulatory standards for attestations by employers. The attestations relating to the applicant's residence were inconsistent with the information he provided on his Form I-687 application and his Form I-687 dated August 13, 1990. The declaration from the president of Centro Sin Fronteras is inconsistent with statements made by the applicant. The declaration submitted by [REDACTED] D. fails to support the applicant's claim of residence in the United States since before January 1, 1982. The affidavits submitted by the applicant's acquaintances are specifically lacking in detail and probative value. The applicant has failed to submit evidence sufficient to corroborate the assertions made on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 attestations that are inconsistent with his own statements, are lacking in detail, and which have 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.