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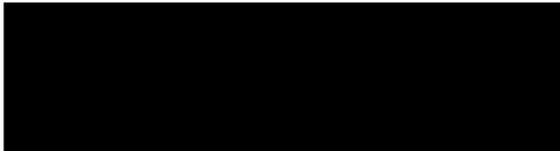
IN RE:

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. 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.

John F. Grissom, Acting 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 Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The 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 she 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, counsel reiterates the applicant's claim of residence in this country for the requisite period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate his residence in this country the period in question. Counsel objects to the director's treatment and analysis of documentation submitted in response to the notice of intent to deny.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 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. *See* 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 "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 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 September 26, 2005. 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 listed [REDACTED], California as his sole residence in this country for the entire requisite period.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a photocopy of a check cashing card from [REDACTED] that bears a photograph of the applicant and the signature of the owner of these establishments, [REDACTED]. However, the probative value of this document is limited as all information relating to the applicant as well as the date, August 1, 1987, is handwritten. Even if this document was viewed in a manner most favorable to the applicant, the check cashing card provides no evidence of his residence in this country prior to the date written on the check cashing card.

The applicant included photocopies of what are purported to be the front and back of the same envelope that the applicant purportedly sent by registered mail to an individual in Mexico. While the back of the envelope contains multiple postmarks from the United States dated August 19, 1985 as well as multiple postmarks from Mexico dated August 21, 1985, the front of the envelope does not contain any corresponding postmarks for either of these two dates. Consequently, this photocopied envelope must be considered to have minimal probative value.

The applicant provided an affidavit signed by [REDACTED] who listed an address in Canyon Country, California as his current residence as of the date the affidavit was executed on December 23, 2005. [REDACTED] stated that the applicant lived at his "house" from 1981 to December 1992. However, [REDACTED] failed to specify whether this "house" was located at his current address in Canyon County, California or an additional or previously owned property at the address in Newhall, California that the applicant claimed was his sole address in this country during the requisite period. Further, [REDACTED] testimony does not contain any additional details or verifiable information to corroborate the applicant's residence in the United States since prior to January 1, 1982.

The applicant submitted an affidavit that is signed by [REDACTED] and dated February 16, 2006. [REDACTED] declared that he and the applicant lived at the Newhall, California address from December 1981 to December 1992. [REDACTED] noted that he would see the applicant on occasion while he worked for New West Landscape from 1981 to 1990. Nevertheless, Mr. [REDACTED] failed to provide any testimony that [REDACTED] was either living at or the owner of the residence in Newhall, California where he and the applicant were purportedly residing during the period in question.

The record contains the notes of the CIS officer who telephoned the affiant discussed in the previous paragraph, [REDACTED], on January 30, 2008. During this telephone conversation, Mr. [REDACTED] indicated that he and the applicant had lived together for approximately five years some ten years ago. [REDACTED] also noted that he did not know an individual named [REDACTED]. [REDACTED] testimony regarding both total length of time and range of dates he and the applicant lived together does not correspond to his prior testimony in his affidavit that he and the applicant lived together for a total of eleven years from December 1981 to December 1992, approximately fifteen to twenty-six years prior to the date of the telephone call. In addition, [REDACTED] testimony that he and the applicant lived at the Newhall, California address from December 1981 to December 1992 but did not know [REDACTED] seemingly conflicts with [REDACTED] prior testimony that the applicant lived at his "house" from 1981 to December 1992.

On May 13, 2008, the director issued a notice of intent to deny the application to the applicant for failure to submit sufficient credible evidence of his continuous unlawful residence in the United States for the requisite period as well as those discrepancies cited above. The applicant was granted thirty days to respond to the notice.

In response, counsel asserted that the applicant, [REDACTED] and another individual, [REDACTED] all lived together for some time during the requisite period at the “garage of a house” in Newhall, California. Although counsel stated that a supporting affidavit signed by [REDACTED] was included with the response, the record does not contain any documentation from [REDACTED]. Additionally, none of the affiants who provided supporting documentation indicated the applicant resided in the garage of a house at any point during the requisite period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

Counsel submitted a new affidavit dated June 6, 2008 that is signed by [REDACTED] the same individual who had previously provided an affidavit in support of the applicant's claim of residence for the period in question. In this new affidavit, [REDACTED] revised his prior testimony by stating that he and the applicant were roommates who lived together at the Newhall, California address from 1981 to 1985, rather than December 1981 to December 1992 as he had previously testified in his first affidavit. Neither [REDACTED] nor the applicant offered any explanation for [REDACTED] revision in his testimony regarding the dates he and the applicant purportedly lived together in Newhall, California during the requisite period.

Counsel provided an affidavit that is signed by [REDACTED] indicated that she knew the applicant, [REDACTED] and [REDACTED] since 1981 as they had all been neighbors in Newhall, California until the applicant moved to Houston, Texas in 1992. However, Ms. [REDACTED] only attested to the general locale of the applicant's residence in this country from 1981 to 1992 without providing any detailed and specific testimony to corroborate the applicant's claim of residence in the United States for the requisite period.

The director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-687 application on June 25, 2003.

On appeal, counsel reiterates the applicant's claim of residence in this country for the requisite period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate his residence in this country the period in question. Counsel objects to the director's treatment and analysis of documentation submitted in response to the notice of intent to deny. However, as discussed above, the supporting documentation contained in the record including documents submitted in response to the notice of intent to deny do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. Furthermore, [REDACTED] initially testified in an affidavit dated February 16, 2006 that he and the applicant lived together at the Arch Street address in Newhall, California from December

1981 to December 1992 but then revised his prior testimony by stating that he and the applicant were roommates who lived together at the Newhall, California address from 1981 to 1985 in an affidavit dated June 6, 2008.

The absence of sufficiently detailed supporting documentation and the conflicting nature of portions of testimony contained in such supporting documents seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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 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 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.