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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI

Date: NOV 24 2008

MSC 05-264-12825

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.

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 District Director, Miami. 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 denied the application, finding that the applicant had not established by a preponderance of the evidence that he had entered the United States on a date prior to January 1, 1982 and then continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and his counsel asserts that the director did not fully consider the evidence submitted by the applicant.

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 245(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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant's friends and an affidavit of employment. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits and declarations from [REDACTED] in support of his application. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

Affiant [REDACTED] states in her affidavit that she met the applicant in 1982 when he was visiting Miami from New York and she was visiting Miami from Santa Domingo. She discusses their interactions in 1982, and she states that she kept in contact with the applicant through letters and phone calls after that time. However, the affiant does not offer proof that she personally knows

that the applicant resided in the United States prior to 1982 and the affiant also fails to state when she herself began to reside in the United States. Though the affiant states that she had “occasional phone calls” with the applicant, she does not state the frequency with which she saw the applicant during the requisite period other than the date of this first meeting.

Affiant [REDACTED] states that he himself has resided at [REDACTED] #5 in Miami Springs, Florida since 1985 and asserts both that the applicant began to reside with him at that address since 1985 and that the applicant continued to be his roommate in March 1990 when he submitted the affidavit. However, the affiant also submitted his Florida State Driver’s License, which states that this affiant resided at [REDACTED] on November 6, 1987 when it was issued. This address is not consistent with the address that the affiant provided as both his and the applicant’s from 1985 to 1990. Similarly, the applicant stated on his Form I-687 that he resided in the Bronx, New York from 1981 until September 1989 and did not moved to Miami until September 1989. This casts further doubt on this affiant’s claim that he and the applicant resided together on Swallow Drive beginning in 1985. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Declarant [REDACTED] states that he met the applicant in 1987 at Dunkin Donuts by chance. He does not state how he is able to date his first meeting with the applicant or indicate where the Dunkin Donuts that they met at was located. The affiant also fails to state the frequency with which he saw the applicant during the requisite period. Further, because this declarant did not meet the applicant until 1987, he does not have personal knowledge of the applicant’s residence in the United States before that time. Because this declaration is significantly lacking in detail, it carries only minimal weight as evidence of the applicant’s residence in the United States from 1987 until the end of the requisite period.

[REDACTED] states that he has known the applicant since 1981 and asserts that he is a good friend. The affiant states that he knows that the applicant traveled to Pakistan in 1985 and 1988 and that he has seen the applicant’s passport that contains a valid visa. However, he does not state that he personally knows that the applicant resided in the United States for part or all of the requisite period. Though he claims that he met the applicant in 1981, he does not state whether he met the applicant in the United States or elsewhere when he first met him. Because this affidavit does not state that the applicant resided in the United States during the requisite period, it carries no weight as evidence that he did so.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and

credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The employment declaration¹ that was submitted by the applicant's alleged former employer is also of little value because it does not adhere to the regulatory requirements for affidavits.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty

In this case, the declarant, [REDACTED], states that the applicant began working for his company in 1985. He states that the applicant worked as a construction helper. Though he speaks of the applicant's work ethic, he does not include the applicant's address of record during his period of employment. He further fails to state what the applicant's exact period of employment was or indicate how he was able to determine the applicant's 1985 start date as his employee. Because this declaration is lacking with regards to the regulatory requirements noted above, it has little probative value as evidence that the applicant resided in the United States from 1985 until the end of the requisite period.

The record also contains statements from the applicant's attorney of record, a Form I-687 submitted to establish class membership in 1990 and the applicant's current Form I-687, which was submitted in June 2005 pursuant to the CSS/Newman Settlement Agreements.

The applicant's Form I-687 submitted in 1990 was also submitted with an affidavit for determination of class membership. Collectively, this Form I-687 and the affidavit state that the applicant first entered the United States in October 1981 using a B-2 visa and that he was then resided in the Bronx, New York and was self-employed doing construction work in New York for the duration of the requisite period. Similarly, the applicant's current Form I-687 also states that the applicant resided in the Bronx, New York where he was self-employed doing construction work for the duration of the requisite period.

¹ This declaration was dated October 10, 1989.

However, as was previously noted, the applicant has also submitted an affidavit from [REDACTED] who states that the applicant resided with him in Miami from 1985 until the end of the requisite period. Because this affidavit is not consistent with either of the applicant's two Forms I-687, on which he states he resided in the Bronx, New York from 1981 to 1989, doubt is cast regarding the applicant's claimed residence in the United States during the requisite period. Because the applicant has submitted an employment declaration from [REDACTED] who states that the applicant was his employee since 1985 but has stated on both Forms I-687 that he was self-employed from 1981 to 1989, doubt is cast on the applicant's assertion that he was employed in the United States during the requisite period.

Similarly, though counsel for the applicant argues in his response to the director's Notice of Intent to Deny the applicant's Form I-687 application that the applicant could not produce evidence of his 1981 entry into the United States because this entry occurred without inspection, this is not consistent with the applicant's 1990 affidavit to establish class membership, where he indicated that he first entered the United States in October 1981 with a B-2 visa.

The affidavits and previously noted documents presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. Both the affidavit from [REDACTED] and the employment letter from [REDACTED] provided by the applicant, therefore, are not deemed credible and shall be afforded little weight. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required 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.