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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC-05-202-12604

Office: SEATTLE

Date:

OCT 07 2008

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:

SELF-REPRESENTED¹

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

¹ [REDACTED] initially represented the applicant on this appeal. On March 22, 2007, [REDACTED] filed a notice to withdraw as attorney of record. Therefore, the applicant will be considered self-represented in this case.

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, Seattle. 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, former counsel asserts that the director failed to give proper weight to the applicant's testimony and the testimony of Tad Welch.

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. 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 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 April 20, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that he resided in New York, New York from 1981 until 2000. At part #32 of the application, the applicant showed that he has had two absences from the United States: August 1998 until December 1998 and January 1999 until April 1999. At part #33, the applicant showed that he was self employed as a vendor in New York, New York from 1981 until 2000.

The applicant submitted the following documentation:

- A letter from [REDACTED], dated October 20, 2005. This letter states that [REDACTED] has known the applicant since 1982 when she first became involved in mountain climbing. It states that they were both members of the 1988 N.W. Everest Expedition and reached the summit together. The applicant furnished a letter from [REDACTED] Expedition Leader for the 1988 Northwest American Everest Expedition, which corroborates his

involvement as a Sherpa in this expedition.² Mount Everest is located in Nepal, the applicant's country of citizenship. Therefore, [REDACTED]'s letter provides no information on her contact with the applicant in the United States during the requisite period. Furthermore, her letter fails to indicate whether she first met the applicant in the United States or aboard. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from [REDACTED], dated October 21, 2005. This affidavit provides that she has personal knowledge that the applicant resided in Seattle, Washington from 1982 until 2005. The affidavit provides that she was introduced to the applicant through friends within the mountain climbing community and they were fellow climbers in 1988 on the Northwest Everest Expedition. This affidavit fails to offer any additional details on [REDACTED]'s relationship with the applicant in the United States during the requisite period. Furthermore, [REDACTED]'s assertion that the applicant resided in Seattle, Washington during from 1982 until 2005 is inconsistent with his Form I-687. The applicant showed on his Form I-687 that his residence and employment were in New York from 1981 until 2000. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], dated October 25, 2005. This letter provides that she has known the applicant since 1991. The record also shows a fill-in-the-blank affidavit from [REDACTED], dated October 25, 2005. This affidavit states that she has personal knowledge that the applicant resided in Seattle, Washington from 1982 until 2005. The affidavit provides that she learned the date that the applicant entered the United States from the applicant's family and her husband. It states that she has personally known the applicant to be in the United States since 1991. Since [REDACTED] does not have direct personal knowledge of the applicant's residence in the United States during the requisite period, her letter and affidavit are without any probative value. Furthermore, her assertion that the applicant resided in Seattle, Washington from 1982 until 2005 is inconsistent with the applicant's Form I-687. The applicant showed on his Form I-687 that his residence and employment were in New York from 1981 until 2000.
- A fill-in-the-blank affidavit from [REDACTED] dated October 25, 2005. This affidavit states that he has personal knowledge that the applicant resided in Seattle, Washington from 1982 until 2005. However, the record reveals a letter from [REDACTED], dated October 25, 2005, which contains contradictory testimony. This letter provides that [REDACTED] has known the applicant since 1971 in Nepal. It states that they reconnected in 1991 when Mr. [REDACTED] came to the United States. Furthermore, [REDACTED]'s assertion that the applicant resided in Seattle, Washington from 1982 until 2005 is inconsistent with the applicant's Form I-687. The applicant showed on his Form I-687 that his residence and employment were in New York from 1981 until 2000. Given these discrepancies, this affidavit and letter are

² The applicant failed to show his absence from the United States in 1988 on his Form I-687.

without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On August 1, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the affidavits (statements) do not contain any verifiable information. The director found that the statements do not testify to the authors' knowledge of the applicant's continuous residence in the United States from January 1, 1982 until May 4, 1988. The director found that the authors did not provide any supporting documentation to lend credibility to their statements. The director noted that the applicant testified he has a spouse and three children in Nepal, and his wife travels to the United States to visit him. The director found that the applicant failed to submit evidence to establish this claim. The director concluded that the applicant failed to submit credible and verifiable evidence to establish his eligibility for temporary resident status. The director afforded the applicant 30 days to furnish additional evidence in rebuttal to the NOID.

The AAO notes that while the director's overall decision was correct, there are a few errors in his analysis. First, the director incorrectly cites to the regulations for legalization under the Legal Immigration Family Equity (LIFE) Act. Applicable to this proceeding are the regulations for legalization under the Immigration Reform and Control Act of 1986 (IRCA). Second, the director incorrectly states that the applicant failed to establish his continuous residence in the United States from January 1, 1982 until May 4, 1988. 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). According to the CSS/Newman Settlement Agreements, "until the date of filing" 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. Finally, the director noted that the authors of the applicant's corroborating statements did not provide their alien identification number or naturalization certificate number to establish the credibility of their testimony. However, there is no regulatory requirement for affidavits or statements to contain evidence of the author's citizenship or lawful permanent resident status. Nevertheless, the director's actions must be considered to be 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(d)(6).

In rebuttal to the NOID, the applicant submitted the following documentation:

- A letter from [REDACTED], Director of the Tanager Lodge, located in Merrill, New York. This letter, dated August 12, 2006, provides that the applicant was a guest at the Tanager Lodge summer camp in 1981 and 1982. However, the letter fails to indicate how [REDACTED] dated the applicant's attendance at the camp. It is unclear whether [REDACTED] obtained this information from his own recollection, Tanager Lodge records, or the applicant. Given this

deficiency, this letter is of little probative value as evidence of the applicant's residence in the United States in 1981 and 1982.

A letter from [REDACTED], dated August 13, 2006. This letter shows [REDACTED] social security number, alien registration number and certificate of naturalization number. This letter is similar to [REDACTED]'s previous letter, but it provides additional information on his personal knowledge of the applicant's residence in the United States. It states, "As we were from the same village, I knew that [the applicant] traveled to the United States during the 1980's." However, [REDACTED] failed to indicate the specific date of the applicant's travel to the United States. This information is necessary to assess whether he has knowledge of the applicant's travel to the United States during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED], dated August 13, 2006. This letter shows Ms. [REDACTED]'s social security number. It is otherwise identical to the previous letter from Ms. [REDACTED]. This letter provides that she has known the applicant since 1991. Therefore, Ms. [REDACTED] does not have direct personal knowledge of the applicant's residence in the United States during the requisite period. Given this deficiency, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], dated August 14, 2006. This letter shows [REDACTED] social security number. It states that she met the applicant in 1982 when she first became involved in mountain climbing. It states that they met through friends who climbed with the applicant in Seattle in 1981. It further states that they were both members of the 1988 N.W. Everest Expedition. As with [REDACTED]'s previous letter, this letter fails to indicate whether she first met the applicant in the United States or aboard. Furthermore, the letter fails to illustrate [REDACTED]'s contact with the applicant in the United States during the requisite period. Given this deficiency, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Copies of pages from the passport of the applicant's spouse, [REDACTED]. This passport shows that a B1/B2 multiple entry visa was issued to her on December 28, 2001. The visa has an expiration date of December 26, 2006. The passport shows numerous arrival and departure stamps from Nepal. It also has a United States entry stamp and I-94 card, which show that she was admitted to the United States on June 28, 2006 as a B2 visitor. Since this document does not relate to the applicant's residence in the United States during the requisite period, it is not relevant to this proceeding.

On January 16, 2007, the director issued a notice to deny to the applicant. In denying the application, the director found that the letters from [REDACTED] and [REDACTED] do not corroborate the applicant's residence in the United States during the requisite period. The director also found that the letter from [REDACTED] offers

no documentary evidence to support his assertion that the applicant attended the Tanager Lodge summer camps in 1981 and 1982. The director stated that CIS contacted [REDACTED] and he testified that the applicant was one of the first Sherpas to visit his camp. [REDACTED] further testified that the applicant worked with children on climbing activities. The director noted that [REDACTED] submitted a letter to CIS, dated November 13, 2006, which states that he has been unable to locate a written record to confirm the applicant's attendance at the Tanager Lodge on these dates. The director determined that [REDACTED]'s passport does not provide evidence of the applicant's residence in the United States during the requisite period. The director determined that the applicant failed to furnish sufficient, credible and verifiable evidence and failed to overcome the grounds for denial. The director concluded that the applicant failed to provide documentation establishing his eligibility for temporary resident status.

On appeal, former counsel asserts that the director failed to give proper weight to the applicant's testimony and the testimony of [REDACTED]. However, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). In this case, the applicant has failed to provide such evidence of his eligibility. The applicant furnished as corroborating evidence of his residence in the United States during the requisite period, numerous letters and fill-in-the-blank affidavits that are inconsistent and lack significant detail. As such, they are without any probative value as corroborating evidence. The one letter that is of some probative value is from [REDACTED], Director of Tanager Lodge, located in Merrill, New York. This letter provides that the applicant was a guest at the Tanager Lodge summer camp in 1981 and 1982. However, it fails to indicate how [REDACTED] dated the applicant's attendance at the camp. When CIS contacted [REDACTED] he testified that the applicant was one of the first Sherpas to visit his camp. [REDACTED] further testified that the applicant worked with children on climbing activities. [REDACTED] then submitted a letter to CIS, dated November 13, 2006, which states that he has been unable to locate a written record to confirm the applicant's attendance at the Tanager Lodge. Therefore, [REDACTED]'s assertions are based on his own recollection of events. Even if [REDACTED]'s assertions are given full weight as probative evidence, they do not cover the entire requisite period. They are only evidence of the applicant's residence in the United States during the summers of 1981 and 1982. The applicant has furnished no other probative evidence of his residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.