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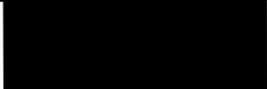
U.S. Citizenship  
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Services

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FILE:



Office: BOSTON

Date: SEP 09 2008

MSC-06-095-12503

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.

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, Boston. 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 that the applicant's evidence was not given sufficient weight.

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 January 3, 2006. 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 his first address in the United States to be in Boynton Beach, Florida from September 1981 until September 1987. At part #33, he showed his first employment to be for Brazilian Pavers in Pompano Beach, Florida from September 1981 until February 1989.

The applicant submitted the following documentation:

- An affidavit from [REDACTED], dated October 1, 2006, which in pertinent part provides:

I have known [REDACTED] since approximately 1981. We first met at a mass in Saint Gabriel Church in Pompano Beach, Florida while visiting a friend. In September 1981 I was residing at [sic] in Westborough, Massachusetts, at that time I was working for International Data Corporation in Farmingham, Massachusetts. I am aware that in September, 1981, [REDACTED] came to the United States with his father to live and work in Pompano Beach, Florida. I believe the applicant left Brazil and traveled to Mexico. From there, [REDACTED] has informed me that he entered the United

States with his father through Mexico then went to Pompano Beach, Florida where they started living. When [REDACTED] first came to the United States he resided on [REDACTED] in Pompano Beach, Florida. Then they moved to 2 different locations also in Pompano Beach, Florida. I know that [REDACTED] lived at that address from about September 1981 to approximately July 1987, until they had to go back to Brazil. I went to [REDACTED] house during a church's visit. During this time I believe [REDACTED] informed me that he and his father worked briefly in a farm, then for a cleaning company and later for a Bricklayer company in Pompano Beach, Florida until they went back to Brazil. . . .

This affidavit fails to establish [REDACTED] direct personal knowledge of the events and circumstances he has attested to. Mr. [REDACTED] indicates in his affidavit that he is aware of the applicant's entry into the United States in September 1981 and residence during the requisite period in Pompano Beach, Florida. However, the affidavit fails to illustrate the basis for his purported knowledge. Furthermore, [REDACTED] assertion that the applicant was employed during the requisite period at a farm, a cleaning company, and then a bricklayer company is inconsistent with the applicant's Form I-687. The applicant's Form I-687 shows that during the requisite period he was only employed with a bricklayer company, Brazilian Pavers. Additionally, [REDACTED] assertion that the applicant resided from September 1981 until July 1987 at [REDACTED] in Pompano Beach, Florida is inconsistent with the applicant's Form I-687. The applicant's Form I-687 shows that he resided at [REDACTED] in Boynton Beach, Florida from September 1981 until September 1987. Given these inconsistencies, the affidavit is without any probative value or credibility as evidence of the applicant's residence in the United States during the requisite period.

The applicant's record shows that on April 6, 1992, he filed a Form I-687 application and worksheet for a determination of his class membership in *CSS v. Meese*. A review of this application indicates that it is materially inconsistent with the applicant's instant Form I-687. The applicant's initial Form I-687 shows his residential addresses during the requisite period as: [REDACTED], Pompano Beach, Florida from September 1981 until February 1983; [REDACTED], Pompano Beach, Florida from February 1983 until November 1985; and [REDACTED], Pompano Beach, Florida from November 1985 until July 1987. However, the applicant's instant Form I-687 shows that during the requisite period he resided at [REDACTED], Boynton Beach, Florida from September 1981 until September 1987. Furthermore, the applicant's initial Form I-687 shows that during the requisite period he was employed with [REDACTED] in Pompano Beach, Florida from November 1981 until July 1987. The applicant corroborated this claim with an affidavit from [REDACTED], [REDACTED], dated April 1, 1992. This affidavit in pertinent part provides, ". . . Our company has known [REDACTED] since he came to work for us in November 1981. He was very young, but a very good worker. Jr as we called him stayed with our company until August 1987. . . ." However, the applicant's instant Form I-687 shows that during the requisite period he was only employed with Brazilian Pavers in Pompano Beach, Florida from September 1981 until February 1989. The numerous inconsistencies between these applications seriously

undermine the applicant's own credibility as well as his claim of continuous residence in the United States during the requisite period.

The applicant also submitted with his initial Form I-687, an affidavit from [REDACTED] dated April 13, 1992. This affidavit in pertinent part provides, "I swear that I went with [REDACTED] in the Miami International Airport, Florida on August 04 of 1987, when he left the United States of America to Brazil to visit his parentes [sic]. When he came from Brazil by Mexico on September 1<sup>st</sup>. of 1987, I picked him up in the Miami International Airport, Florida coming from Los Angeles California on September, 03 of 1987. . . ." This affidavit fails establish how [REDACTED] and the applicant first became acquainted. Additionally, it does not provide any details on their relationship in the United States during the requisite period. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On January 31, 2006, the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded thirty 30 days to submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted another statement from [REDACTED]'s notarized letter, dated February 12, 2006, in pertinent part provides, "I have known [REDACTED] since February 1981 when we attended the same church. I have always known him to be a person of good moral character. . . ." This letter offers no additional information to corroborate [REDACTED] personal knowledge of the applicant's residence in the United States during the requisite period. Moreover, the letter is inconsistent with [REDACTED] previous statement. The letter states that [REDACTED] first met the applicant in February 1981. However, [REDACTED]'s previous statement indicates that the applicant entered the United States in September 1981 and he first met the applicant after this entry. Given this inconsistency, this statement is without any probative value or credibility as evidence of the applicant's residence in the United States during the requisite period.

On December 26, 2006, the District Director, Boston, issued a notice to deny the application. In denying the application, the director found that the applicant failed to produce any evidence to substantiate his claim of physical presence in the United States from 1981 until the present. The director determined that the applicant failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residence in the United States prior to January 1, 1982.

Although the director was correct in his decision to deny the application, there is an error in his analysis of the requisite period. 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, the term “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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. Therefore, the director’s determination that the applicant failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residence in the United States prior to January 1, 1982 is withdrawn. 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).

On appeal, counsel asserts that the applicant’s evidence was not given sufficient weight.

In analyzing the weight of the evidence, the AAO determines that the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, two statements from [REDACTED]. The inconsistencies in [REDACTED]’s statements render them without any probative value or credibility as corroborating evidence. Furthermore, the applicant’s record reveals that on April 6, 1992 he filed a Form I-687 application. The applicant’s residence and employment claims on this initial Form I-687 are materially inconsistent with the applicant’s instant Form I-687. The applicant submitted with his initial Form I-687 affidavits from [REDACTED], [REDACTED], and [REDACTED]. This affidavit from [REDACTED] lacks considerable detail on his relationship with the applicant. Therefore, it is without any probative value as corroborating evidence. The affidavit from [REDACTED] is an employment verification statement that is inconsistent with the applicant’s claim of employment on his instant Form I-687. Therefore, it is without any probative value or credibility as evidence of the applicant’s residence in the United States during the requisite period. The absence of probative documentation and the contradictory claims in the record seriously undermine the credibility of the applicant’s claim of

residence in the United States for the requisite period, as well as the credibility of the documents submitted in support of his claim.

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.