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U.S. Citizenship  
and Immigration  
Services

L1

[Redacted]

FILE: [Redacted] MSC-04-329-11186

Office: NEW YORK

Date: SEP 26 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York. 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. Specifically, the director noted that there were numerous discrepancies in the voluminous record that cast doubt on the applicant's eligibility for the benefit sought. 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, the applicant asserts that he is eligible for temporary resident status based upon the evidence submitted.

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)(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).

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 August 24, 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 showed his first address in the United States to be [REDACTED] [REDACTED] from November 1981 to May 1986 and [REDACTED] New York” from May 1986 until February 1990.

A complete review of the record reveals the following evidence in support of this application:

- (1) Affidavits from [REDACTED] who claim that they have known the applicant since November 1981, when the applicant arrived in the United States. None of the affiants indicate under what circumstances they met the applicant in 1981, how they date their acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently they had contact with him.

- (2) Affidavit, date August 20, 2005 from [REDACTED], who states that he is the applicant's brother and they entered the United States together on November 15, 1981. He does not state where they entered the United States, where he lived during the requisite period, how frequently he saw his brother during the requisite time period, or any other relevant details of the applicant's continuous residency in the United States during the relevant period.
- (3) Affidavit dated August 31, 2005 from [REDACTED], claiming that he has known the applicant since 1982 when the affiant entered the United States. He does not indicate how he met the applicant, how he dates their initial acquaintance, or where the applicant lived during the relevant period.
- (4) An illegible copy of a W-2 from 1987. The W-2 does appear to include the applicant's name, however, the social security number on the form is different than the social security number used by the applicant on all other tax documents submitted.
- (5) Tax documents from 1987 bearing the applicant's name and address. These documents contain the same social security number as the W-2 referenced above.
- (6) Affidavit from [REDACTED] dated November 9, 1988 who indicates that she has known the applicant since 1981. Like the affiants described above, the affiant does not indicate where the applicant lived during the requisite period, how frequently she saw him during the requisite time period, or any other relevant details of the applicant's continuous residency in the United States during the relevant period.
- (7) Affidavit dated November 3, 1988 from [REDACTED] who indicates that she has known the applicant since 1981. She provides no other relevant details.
- (8) Affidavit dated November 1, 1988 from [REDACTED] who indicates that she has known the applicant since 1981 when she met him in New York. She provides no other relevant details.
- (9) A letter from [REDACTED] New York, who indicates that the applicant has been a resident of [REDACTED] from April 1986 to the present. The letter is not dated.
- (10) An undated letter from [REDACTED] who indicates that [REDACTED] resident at [REDACTED], is presently working for me." This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's permanent address at the time of employment, exact period of employment, or pertinent information

relating to the availability of company records. The statement by [REDACTED] does not state which season the applicant worked for him, what his duties were or provide the exact dates of his employment. Because the statement does not include much of the required information it will be afforded no weight as evidence of the applicant's residence in the United States during the relevant period.

- (11) A letter from [REDACTED] in which the declarant, whose name is illegible, indicates that the applicant worked in the center from 1983 until 1986. This letter lacks the same details noted above and will be given no weight.
- (12) A nearly illegible letter from [REDACTED] of Home Styles Inc., who indicates that the applicant has been employed "on and off for the past two years-since 1986." This letter lacks the same details noted above and will be given no weight.
- (13) A letter from G&J Precious Metals of Providence, Rhode Island, signed by [REDACTED]. The declarant states that the applicant "worked for us for almost three years as a machine operator." This letter lacks the same details as noted above. It is also noted that the applicant does not indicate on his legalization application that he ever lived in Rhode Island. This letter will be given no weight.

The director denied the application for temporary residence on January 27, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible. Specifically, the director referenced the employment verification letters and affidavits noting that they lacked sufficient detail to be of significant probative value. The director also noted several inconsistencies in the record. Specifically, the director noted that on a previously filed asylum application the applicant indicated that he resided at [REDACTED] from 1986 until 1990. On a LIFE Act application filed on July 24, 2001 the dates of applicant's residence on [REDACTED] appear to have been altered from 1986 to 1981. The director also noted that the applicant indicated on his Form I-687 application that he worked for Zierick Manufacturing from 1990 until 1994. However, on his previous Form I-485 LIFE Act application he indicated that the dates of his employment with Zierick Manufacturing were 1988 until 1990.

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. On appeal, the applicant has not provided any explanation regarding the inconsistent information.

Also, while there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation by churches, unions or other organizations, should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information.

As discussed above, the affiants' statements are lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Further, this applicant has provided very limited contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his employment and residence in the United States during the relevant period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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. It is therefore concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.