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FILE: [REDACTED]
MSC 04 300 11077

Office: NEW YORK

Date: DEC 21 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: SELF-PRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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.

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 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 addressed documentation previously submitted by the applicant and denied the application, finding that the applicant had not met his burden of proof. Therefore, the applicant was deemed ineligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant reasserts his claim and submits additional documentation to support the claim that he has lived in the United States during the requisite statutory time 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 Immigration and Nationality Act (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).

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. 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. In support of his claim, the applicant initially submitted the following documentation:

1. A copy of the applicant's Form I-687 application dated August 22, 1990. It is noted that in No. 35, which asks about the applicant's absences from the United States during the statutory period, the applicant wrote "none," thereby indicating that he was present in the United States during the entire statutorily relevant time period.
2. A letter dated June 28, 2004 from [REDACTED] claiming that she has known the applicant since 1981. She further stated that she and the applicant shared an apartment "during this time." However the affiant did not specify the address of the residence she and the applicant purportedly shared or the specific dates of their cohabitation.
3. Letters dated May 26, 27, and 30, 2004 from [REDACTED], and [REDACTED], respectively. Ms. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] claimed to have known the applicant since 1985, 1984, and 1983, respectively. Although all three individuals vouched for the applicant's good moral character, none provided specific facts or circumstances about the applicant's residence in the United States during the statutorily relevant time period.
4. A letter dated April 30, 2004 from [REDACTED] claiming that he has known the applicant for 15 years, which places their initial meeting in 1989. As Mr. [REDACTED] did not claim to know the applicant during the statutorily relevant time period, his statements have no probative value with regard to the primary issue of the applicant's residence.
5. Four photocopied envelopes with foreign postage, indicating that they originated abroad. All four envelopes are addressed to the U.S. address where the applicant claims to have resided during the statutory period. It is noted that the postmark dates on all four envelopes are illegible.

On March 7, 2006, the director issued a notice of intent to deny determining that the applicant failed to provide sufficient credible evidence establishing his U.S. residence during the statutory time period. The applicant was allowed 30 days in which to respond to the adverse findings. In response, the applicant

provided additional evidence consisting of two affidavits and an original envelope, complete with foreign postage and the addressor and addressee information. One affidavit, dated March 31, 2006, was signed by [REDACTED] who claimed that he met the applicant on December 10, 1981. Mr. [REDACTED] also stated that he has been a U.S. citizen for over 40 years and can attest to the applicant's U.S. residence since 1981. He stated that except for the applicant's departure from the U.S. on "a couple of occasions," he has resided in the United States. With the exception of the applicant's first U.S. residential address, the affiant provided no other verifiable information. Moreover, the AAO notes that the Certificate of Naturalization provided by Mr. [REDACTED] along with his written attestation indicates that he did not become a citizen of the United States until April 27, 2000. As such, the affiant's claim that he has been a U.S. citizen for 40 years is fictitious, thereby greatly detracting from the affiant's credibility.

The second affidavit, dated April 1, 2006, was from [REDACTED] who also claimed to have known the applicant since December 1981. The affiant attested to the applicant's continuous U.S. residence since the time she had known him and also described the circumstances surrounding the applicant's departure from the United States on two occasions. Ms. [REDACTED] stated that she and the applicant had been attending the same church together since early 1988.

Lastly, the applicant submitted an original envelope with Colombian postage. It is noted that the applicant's name appears on the back of the envelope, thereby suggesting that he was the originator. The addressee appears to be someone in another country, which was not included as part of the address. While the envelope contains some form of a postal date stamp, the date is not legible. Moreover, the fact that the envelope contains foreign postage while simultaneously showing the applicant as the originator suggests that this evidence may have been fabricated and, therefore, cannot be considered to support the applicant's claim.

In a decision dated May 30, 2006, the director denied the application. The director stated that Citizenship and Immigration Services (CIS) contacted Mr. [REDACTED] who stated that he did not know the applicant. The director also stated that while CIS attempted to contact Ms. [REDACTED] she could not be reached. Furthermore, information available to CIS showed that Ms. [REDACTED] did not come to the United States until January 9, 1985. As such, the director questioned the veracity of the affiant's claim suggesting that she has known the applicant since 1981. Lastly, while the director did not note the anomaly of foreign postage appearing on an envelope that seemingly originated in the United States, he did note the lack of a postmark date on the envelope.

On appeal, the applicant submits additional documentation in support of his claim. In an attempt to overcome the adverse findings with regard to the two affiants discussed above, both individuals provided additional statements of explanation. In a statement dated June 15, 2006, Mr. [REDACTED] explained that he remembers the applicant primarily by a nickname rather than his full name. He claimed that when he was contacted by a CIS representative who referred to the applicant by his full name, he got confused and stated that he did not know a [REDACTED]. It is noted that Mr. [REDACTED] referred to the applicant as "[REDACTED]" in the affidavit he signed on March 31, 2006. Therefore, despite Mr. [REDACTED] explanation, the affiant's credibility remains questionable as a result of his inconsistent claim regarding his U.S. citizenship, which he claimed he's had for 40 years even though the Certificate of Naturalization he submitted clearly shows that he did not become a U.S. citizen until the year 2000.

The applicant also provides a statement dated June 20, 2006 from [REDACTED] who explained that she first met the applicant via phone, not in person. Ms. [REDACTED] ultimately admitted that she did not meet the applicant in person until 1985. However, the probative value of the affiant's testimony is considerably diminished for

two reasons. One, the affiant cannot properly attest to the applicant's continuous residence in the United States during a large portion of the statutory time period because she was not in the United States herself and, therefore, does not have personal knowledge of his U.S. residence; and two, the affiant's initial testimony is misleading as to her own U.S. residence prior to 1985. As such, this affiant's credibility is also dubious.

The applicant also provides additional affidavits from three new affiants. One affidavit, dated June 18, 2006, is from [REDACTED] who claimed that she has known the applicant since 1982 and met him while studying English. Although the affiant claimed that she has maintained a relationship with the applicant since they first met, she provided no information regarding the facts and circumstances surrounding the applicant's life in the United States. Another affidavit, dated June 13, 2006, is from [REDACTED], who attested to the applicant's U.S. residence since 1981 even though she only claimed to have met him in 1982. She too failed to provide any verifiable information regarding the events and circumstances of the applicant's life in the United States during the statutory period. The final affidavit, dated June 23, 2006, is from [REDACTED] who also attested to the applicant's continuous U.S. residence since 1981 without providing any verifiable information or even discussing the basis for her testimony.

Lastly, the applicant provided photocopies of several envelopes, two of which were addressed by the applicant to individuals in Bogota, Colombia. However, this documentation appears to be fraudulent, as it contains foreign postage stamps and postmarks on mail that purportedly originated in the United States. While the applicant provided several other photocopied envelopes from Colombia addressed to the applicant at his purported U.S. residence, the legitimacy of this documentation is deemed suspect based on the applicant's questionable submissions that lack credibility. 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 petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

In summary, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period coupled with other defects in the submitted evidence seriously detract 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. Given the applicant's reliance upon documents with minimal 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 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-20* I&N Dec. 77. 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.