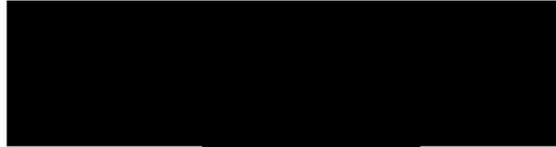


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FILE:

MSC-05-288-10969

Office: NEWARK, NJ

Date:

OCT 19 2007

IN RE:

Applicant:

APPLICATION:

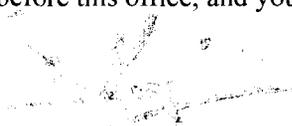
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

  
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, Newark, New Jersey, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director found inconsistencies in the evidence submitted by the applicant regarding both the place where he tried to first file for legalization during the original filing period and regarding his place of claimed employment. The director further found that evidence submitted by the applicant did not prove, by a preponderance of the evidence that he entered the United States on a date before January 1, 1982. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits additional affidavits and a statement in which he asserts that because he was living in the United States illegally, he was unable to obtain further evidence in support of his claim of having maintained continuous residence for the duration of the requisite period. He goes on to attempt to account for the contradictions in his previously furnished evidence.

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).

An applicant applying for adjustment to temporary resident status must 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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 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, 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.

An applicant applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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).

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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 12, 2005. 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 did not indicate any dates associated with his five addresses. However, he listed them in the following order: [REDACTED] Morristown, NJ; [REDACTED], Morristown; [REDACTED] Morristown; "Pennsylvania/Lancaster" in Reading NJ;

and lastly [REDACTED]. It is noted that there is no city associated with this last address. At part #31 where the applicant was asked to list all associations, including churches, that he has ever been a member of, the applicant did not indicate that he was a member of any associations or churches. At part #32 where the applicant was asked to list all absences since his first date of entry into the United States, the applicant showed that he went to Canada in February of 1987, returning that same month. At part #33 where the applicant was asked to indicate his employment since January 1, 1982, he indicated that he has always been self-employed as a handyman. He showed his work address to be [REDACTED] in Morristown, NJ. He did not indicate when this employment began but indicated that he continued to work in this capacity at the time he signed his Form I-687.

The record also contains a statement from the applicant. In this statement, the applicant asserts that he first entered the United States on November 30, 1981, that he was absent from the United States once during the requisite period, when he went to India from February 21, 1987 to February 28, 1987. It is noted here that the applicant indicated that he traveled to Canada at that time on his Form I-687. The applicant states that he tried to apply for legalization during the original legalization period but was turned away. He goes on to say that he traveled back to India on an unspecified date after the amnesty period and then returned to the United States on October of 1995. It is noted that the applicant did not indicate that he was absent from the United States after his February 1987 absence on his Form I-687.

It is noted that the record indicates that the applicant was arrested on October 10, 2001 on two counts: burglary by entering a structure and harassment. The record also goes on to show that charges against this applicant were dismissed during a pre-trial intervention. This record of arrest and subsequent dismissal of the charges associated with that arrest alone is not cause to determine that the applicant is ineligible to adjust to Temporary Resident Status under 8 C.F.R. § 245a.2(c)(1) as the dismissed charges do not constitute convictions of a felony or three or more misdemeanors.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

- A letter from [REDACTED] of Scotland Church in Morristown, New Jersey that states that the current pastor, who spells his name [REDACTED] knows that the applicant has attended his church since 1995. It is noted that this is after the requisite period ended. It is also noted that the applicant did not indicate that he was a member of a church on his Form I-687. Here, the affiant is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, or that he continuously resided in the United States for the duration of the requisite period since the affiant confirmed he did not meet the applicant until after the requisite period, in 1995. Therefore, this affidavit carries no weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A letter from [REDACTED] who states that the applicant worked for the Calaloo Café starting in 1981 for approximately one and a half years. It is noted that the official website of the Calaloo Café, found at <http://www.calaloo cafe.com> indicates the restaurant was not operational until 1985. 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 of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, the employment verification letter is found lacking with regard to these criteria. Further, doubt is cast on the credibility of this affidavit as the official website of the Calaloo Café states that it was not operational until 1985 and did not exist at the time [REDACTED] states the applicant worked there.
- A declaration from [REDACTED] that states that he knows personally that the applicant entered the United States on November 30, 1981 and then resided continuously throughout the requisite period. This affidavit goes on to state that [REDACTED] knows that the applicant attempted to file for amnesty in New York City during the original filing period. It is noted here that the record reflects that at the time of his interview on November 15, 2005, the applicant indicated that he attempted to file for legalization in Arkansas. This affidavit is found to be insufficiently detailed to confirm the applicant's residence for the duration of the requisite period. Further, it is found to conflict with the applicant's testimony.

- An affidavit from [REDACTED] and accompanying letter from that states that the affiant is friends with the applicant and met him in 1984 when the applicant became a customer at his grocery store. This affidavit is found to be insufficiently detailed to confirm the applicant's residence for the duration of the requisite period. In addition, the affiant is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, since the affiant confirmed he did not know the applicant until 1984.
- An affidavit from [REDACTED] who states that he entered the United States in December of 1997. The affiant goes on to say that he personally knows that the applicant was in the United States for the duration of the requisite period. This affidavit is found to be insufficiently detailed to confirm the applicant's residence for the duration of the requisite period. In addition, the affiant is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, since the affiant confirmed he did enter the United States until after the requisite period.

In denying the application the director noted the above, and the fact that the applicant did not meet his burden in establishing, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

However, for the reasons stated above, the affidavits submitted by this applicant are not found to be sufficient to prove by a preponderance of the evidence that this applicant maintained continuous residence in the United States for the duration of the requisite period.

On appeal the applicant attempts to explain these contradictions. He states that he has worked for the Calaloo Café and for restaurants located on the same site as the [REDACTED] since November 30, 1981. He goes on to say that the names of other restaurants that have operated from that same site are [REDACTED]. He also states that because he was not legally in the United States he was unable to obtain any rent receipts or bank accounts. It is noted here that the applicant indicated that the only employment he has had since entering the United States has been as a self-employed handyman, casting doubt on the applicant's assertion that he has worked in the restaurant business since 1981. Further, the affidavit from

clearly states that the applicant began working for the , and that this information was taken from the general records of that particular café, casting doubt on the applicant's statement that he worked for other restaurants at that same site since 1981.

It is incumbent upon the petitioner 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. *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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant also submitted the following affidavits in support of his application:

- An affidavit from who states that she has known the applicant for years and sees him almost daily in the Church of Saint Margaret of Scotland in Morristown. It is noted here that the applicant did not indicate that he was a member of a church when he was asked to do so on his Form I-687. This affidavit goes on to say that the applicant has been working in the United States since 1981 performing manual labor such as painting and construction and he waked in "many of the restaurants in Morristown." It is noted here that the applicant did not indicate that he worked in any restaurants on his Form I-687. It is further noted that the affiant does not indicate when she met the applicant or how she knows that he was present in the United States during the requisite period. This affidavit is found insufficiently detailed to establish that the applicant resided continuously in the United States for the duration of the requisite period.
- A signed letter from who states that the applicant has been employed in the Calaloo Café since December of 1985. It is noted here that has spelled her name differently in this letter than in her previously submitted letter. It is further noted that the previously submitted affidavit stated that the applicant worked at this restaurant for approximately one and a half years beginning in 1981. The two affidavits submitted by this individual are not consistent. Therefore doubt is cast on the credibility of this affiant and it can be afforded very minimal weight in establishing that the applicant resided in the United States continuously during the requisite period.
- An affidavit signed by who states that she is aware that the applicant resided continuously in the United States during the requisite period. In a letter submitted with the affidavit, states that the applicant is an attendee at her church in Morristown. It is noted here that the applicant did not indicate that he was a member of a church on his Form I-687. Therefore, this affidavit is found to conflict with what the applicant showed on his Form I-687. This affidavit fails to state how the affiant met the

applicant or how she knows that he continuously resided in the United States during the requisite period. This affidavit is found insufficiently detailed to be afforded anything but minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] who states that the applicant lived in Madison New Jersey in 1981 and that at that time he worked for her father at the Sunoco Gas Station on Main Street in Madison. This affidavit fails to indicate the dates of this employment or how [REDACTED] knows the applicant's start date at this place of employment. It is noted here that the applicant did not indicate that he was employed by the affiant's father, [REDACTED] or that he ever worked for Sunoco Gas Station on his Form I-687. It is further noted that the applicant did not indicate that he had ever lived in Madison New Jersey on his Form I-687. As this affidavit is found to be inconsistent with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant continuously resided in the United States during the requisite period.

In summary, the applicant has failed to provide sufficient evidence that establishes that the applicant continuously resided in the United States for the duration of the requisite 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). However, for the reasons stated above, he has failed to do so.

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. Given the applicant's contradictory statements on his applications and in his affidavits submitted in support of his application and his 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--*, *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.