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

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FILE:

MSC-06-101-16767

Office: NEW YORK

Date: OCT 25 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:

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. [REDACTED] LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame of January 1, 1982 through May 4, 1988. Therefore, the director determined the applicant had not demonstrated by a preponderance of the evidence that he is eligible for legalization pursuant to 8 C.F.R., Section 245A, and denied the application.

On appeal, the applicant provided the daytime telephone number for an affiant, explained that one of his affiants does not have a working daytime telephone number, and explained that affiants can confirm his presence in the United States despite having not been in the United States themselves during 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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).

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, 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 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 and 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 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 Citizenship and Immigration Services (CIS) on January 9, 2006. 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 listed the following addresses during the requisite period: [REDACTED] New York from October 1981 to June 1983; 33-24 Farrington Street #9, Flushing, New York from June 1983 to November 1986; and 40-19 [REDACTED] from November 1986 to September 1989.

The record contains multiple affidavits submitted by the applicant. The applicant submitted affidavits from [REDACTED]. These three affidavits are virtually identical. They state that the applicant has lived continuously and unlawfully in the United States from before January 1, 1982 until January 25, 1988, when the applicant attempted to apply for legalization. None of these affidavits provide an explanation of the affiant's relationship to the applicant, the time or manner in which they became acquainted, or the addresses where the applicant resided during the requisite period. As a result, these affidavits are found to lack sufficient detail. In addition, although not required, the affiants failed to provide evidence that they resided in the United States during the requisite period. In the case that they did not reside in the United States during the requisite period, none of the affiants provided an explanation of how they are still able to confirm the applicant's residence during the requisite period.

In response to the Notice of Intent to Deny (NOID) issued on June 20, 2006, the applicant provided additional affidavits from [REDACTED] and You [REDACTED]. These three affidavits are virtually identical, with the exception that [REDACTED] identified herself as the applicant's niece, [REDACTED] identified himself as the applicant's uncle, and [REDACTED] identified herself as the applicant's sister-in-law. All the affidavits state that the applicant entered the United States without inspection on October 2, 1981 and that he resided continuously in an unlawful status in the United States since before January 1, 1982 through May 4, 1988. The affidavits also explain the difficulty in obtaining documentation of residence after living as an illegal immigrant in the United States. None of these affidavits list the applicant's addresses during the requisite period. None of the affidavits include statements indicating the affiant resided in the United States during the requisite period. In the alternative case that the affiants did not reside in the United States during the requisite period, none of them provided an explanation of their ability to confirm the applicant's residence in the United States. As a result, these affidavits are found to lack sufficient detail.

The director determined the applicant failed to provide any tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame of January 1, 1982 through May 4, 1988. Therefore, the director determined the applicant had not demonstrated by a preponderance of the evidence that he is eligible for legalization pursuant to 8 C.F.R., Section 245A, and denied the application. Specifically, the director noted that multiple unsuccessful attempts were made to contact You [REDACTED] and CIS records indicated both affiants first entered the United States in 1992.

On appeal, the applicant provided the daytime telephone number for [REDACTED], explained that You [REDACTED] does not have a working daytime telephone number, and explained that affiants can confirm his presence in the United States despite having not been in the United States themselves during the requisite period. The applicant also explained that [REDACTED], another affiant, is the applicant's uncle. The applicant stated that [REDACTED] is a United States citizen and was present during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail. Specifically, the affidavits from [REDACTED] are virtually identical and fail to explain the affiant's relationship to the applicant. The affidavits from Winne [REDACTED] are virtually identical, except that each affiant distinguishes his or her family relationship to the applicant. None of these affidavits provide the applicant's addresses during the requisite period. Two of the affiants are known to have been outside the United States during the requisite period. Neither affiant explained how he or she can confirm the applicant's residence despite having been outside the country during the requisite period. All the affidavits provided by the applicant lacked sufficient detail.

The absence of sufficiently detailed supporting 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 lack of detail in the affidavits the applicant provided, and 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--*, *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.