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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: SEP 18 2007
MSC 05 006 10043

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: 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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. Therefore, the district 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 states that he has provided official government documents to corroborate his claim of continuous residence in the United States 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 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).

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.

An alien 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. *See* 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 CIS on October 6, 2004. At part 16 of the Form I-687, where applicants are asked when they last came to the United States, the applicant indicated that he last entered the United States in December 1986. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he had resided at [redacted] New [redacted] The applicant did not list any residences in the United States prior to 1999. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he has been unemployed since he entered the United States.

The record contains a photocopy of the applicant's 1990 Form I-687. At part #35, where applicants were instructed to list all absences outside the United States since initial entry, the applicant indicated that he was in Ecuador visiting family from July 1987 to August 1987. The applicant indicated on the accompanying CSS class action membership questionnaire that he departed the United States and flew to Ecuador on July 8, 1987, and returned to the United States on August 10, 1987. The applicant submitted an original Eastern Airlines ticket flight coupon

dated July 5, 1987, indicating that the applicant was scheduled to fly from Newark, New Jersey to [redacted], via Miami, Florida, on July 8, 1987. This is a one-way ticket. The applicant did not provide an original or photocopy of his return flight coupon to corroborate his claim regarding his dates of absence outside the United States in 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter dated December 7, 1990, from [redacted] Lady of Mercy Church located at [redacted] stated that the applicant has been a member of his church since August 1983.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The letter from [redacted] does not conform to this standard. [redacted] did not provide the address(es) where the applicant resided during the membership period.

The applicant also submitted an affidavit dated January 10, 1991, from [redacted] a resident of Newark, New Jersey. [redacted] stated that he supported the applicant financially from the time he first came to the United States in November of 1981 to August 1984. However, [redacted] did not provide any specific and detailed verifiable information, such as the applicant's address(es) in the United States during the requisite period, to corroborate the applicant's claim.

The applicant included a fill-in-the-blank affidavit dated December 20, 1990, from [redacted] resident of Newark, New Jersey. [redacted] indicated that she had known the applicant since 1981. [redacted] stated, "[f]rom that time to the present I have seen him regularly in different contexts, and I am sure he has resided continuously in the U.S.A. since that date." However, [redacted] did not provide any information as to how she met the applicant or the applicant's address(es) in the United States during the requisite period to corroborate his claim. It is noted that the statement quoted above was not hand-written by [redacted], but rather is actually a pre-printed part of the affidavit form and does not necessarily relate specifically to Ms. [redacted] acquaintance with the applicant. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also included a fill-in-the-blank affidavit dated April 11, 1991, from [redacted] indicated that she had known the applicant since 1981. This affidavit contains the same pre-printed statement as the affidavit from [redacted] indicating that the affiant had seen the applicant regularly "in different contexts and I am sure he has resided continuously in the U.S.A. since that date." Indeed, this affidavit is identical to the affidavit signed by [redacted] except for the name and address of the two affiants and their signatures. Therefore, the affidavit from [redacted] also will be accorded little evidentiary weight.

The applicant provided an employment letter dated October 12, 1990, from [redacted] Controller of Interport Maintenance Company, Inc., located at [redacted] New Jersey." [redacted] stated that the applicant had worked for his company since July 1984 as a porter.

Pursuant to 8 C.F.R. § 245a.2(d)((3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The employment letter from [redacted] does not conform to this standard. [redacted] failed to provide the applicant's address(es) at the time of employment.

The applicant also provided a letter dated January 28, 1991, from [redacted] of La Furniture Warehouse in Newark, New Jersey. [redacted] stated that the applicant had an account with his store from March 1985 through 1986 "for the amount of four hundred eighty dollars ($480.00) which he paid in six months at a monthly payment of Eighty Dollars ($80.00)." However, Mr. [redacted] failed to provide any relevant and verifiable information such as the applicant's addresses in the United States during the period of his business relationship with La Furniture Warehouse to corroborate the applicant's claim.

The applicant submitted a letter dated October 19, 1990, from [redacted], New Jersey. [redacted] stated that the applicant had been her patient since April 1984. However, [redacted] did not provide any documents such as medical records or invoices reflecting the applicant's addresses in the United States during the requisite period to corroborate his claim.

The applicant also submitted a letter dated January 17, 1991, from [redacted] Coordinator, English as a Second Language, Newark Skills Center, Newark, New Jersey. [redacted] stated that the applicant was a full-time student in his English as a Second Language program from June 1982 to September 1982.

The applicant also submitted affidavit dated August 15, 2005, from [redacted] a resident of Newark, New Jersey. [redacted] stated that he had known the applicant since 1981. However, [redacted] failed to provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's residences in the United States during the requisite period to corroborate the applicant's claim.

The applicant provided an affidavit dated August 10, 2005, from [redacted] a resident of Kearny, New Jersey. [redacted] stated that he had known the applicant since 1981. However, [redacted] failed to provide any specific and detailed verifiable information, such as the applicant's address(es) in the United States during the requisite period, to corroborate the applicant's claim.

The applicant also provided an affidavit dated July 25, 2005, from [redacted], a resident of Newark, New Jersey. [redacted] stated that he first met the applicant in September 1986 at a nightclub with mutual friends. However, [redacted] failed to provide any specific and detailed verifiable information, such as the applicant's address(es) in the United States during the requisite period, to corroborate the applicant's claim.

The applicant submitted original earnings statements from Flexon Industries Corporation of Newark, New Jersey, dated from March 1987 through August 1987 and in December 1987. It is noted that the applicant stated on his 1990 CSS class membership questionnaire that he departed the United States for Ecuador on July 8, 1987, and returned to the United States on August 10, 1987. This statement appears to be contradicted by the dates on his Flexon Industries pay statements. Two of his Flexon Industries pay statements are for the one-week pay periods ending on July 27, 1987 and August 10, 1987. If the applicant was in Ecuador during the period from July 8, 1987 to August 10, 1987, as he claimed on his 1990 CSS/Newman class membership questionnaire, he could not possibly have worked for Flexon Industries in Newark, New Jersey, during the weeks of July 20 to July 27, 1987 and from August 2 to August 10, 1987. The applicant has not provided any explanation for this contradiction.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On appeal, the applicant states that he has provided official government documents that are verifiable and corroborate his claim of continuous residence in the United States during the requisite period. The applicant is referring to a court summons from the Municipal Court of Harrison, Harrison, New Jersey, ordering the applicant to appear in that court on April 14, 1997 for a pre-trial conference[redacted] and a document from the Municipal Court of the City of Newark, Newark, New Jersey, indicating that the applicant was convicted of driving while intoxicated on May 23, 1989. He was ordered to pay a fine of $320 plus court costs. [redacted] These documents are both dated after the requisite period to establish continuous residence in the United States.

The absence of sufficiently detailed supporting documentation and the contradictions noted above seriously undermine the credibility of the applicant's claim of residence in this country during the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8

C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

It is noted that the applicant has one DWI conviction and has been summoned to traffic court on at least one other occasion in 1997 in relation to an unknown charge. The record does not contain any court documents revealing the final court disposition of the 1997 charge. The applicant's single 1989 misdemeanor DWI conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.