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

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FILE: [redacted] Office: NEW YORK Date: JAN 2 9 2008
MSC 06 075 10232

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.

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, 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, on July 3, 2006. 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. In denying the application, the director observed that the applicant had relied primarily on boilerplate affidavits that were neither credible, probative, nor amenable to verification. The director denied the application as 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, counsel for the applicant asserts that it has been difficult for the applicant to obtain documentation from the 1980s, but he has nevertheless produced evidence in support of his application and the director should have "honored the validity" of the photographs, affidavits and other evidence provided. The applicant submits additional evidence in support of the appeal.

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 from 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 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 applicant 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 for the duration of the requisite period. 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 3, 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 showed that he continuously resided [redacted] New York. It is noted that this the business address of the attorney who prepared the application, not the applicant's residential address during the requisite period. Counsel states on appeal that this address was used "for security reasons." However, the applicant's failure to indicate his actual addresses of residence on the Form I-687 makes it impossible to verify any information provided in this regard by affiants, as discussed further below. At part #33 of the applicant's Form I-687, where he was asked to list all of his employment in the United States since he first entered, he stated that he was "self employed" since December 1979.

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).

The applicant submitted the following evidence in support of his application:

1 Affidavits from [redacted] All of these affidavits were signed in May 2004 and they were all essentially identical in content. Each affiant certified that they have known the applicant in the United States since 1980, that he has been living in New York since that time, and that he is a "good person, good friend and very hard worker." Each affiant provided proof of his or her identity and a contact telephone number. None of the affiants stated how, when or under what circumstances they first met the applicant, how they date their acquaintance with the applicant, what their relationship with him is, or how frequently they had contact with him during the requisite period. None of the affiants states that they have direct, personal knowledge of the applicant's addresses of residence in the United States, and none of them provide any proof of their relationship with the applicant, any details regarding the events and circumstances of the applicant's life in the United States or any other information that would lend credibility to their claims of knowing the applicant as a "good friend" for a period of 24 years. Given these deficiencies and the significant lack of detail, these affidavits have extremely limited probative value.

2. An affidavit from [redacted], dated June 14, 2004. Mr. [redacted] certified that he has known the applicant in the United States since 1981, that the applicant has been living in New York since 1980, and that he rented a studio apartment to the applicant in his house located at [redacted] New York from 1985 to 1990. Mr. provided a copy of his New York State driver license as proof of his identity.

3. An affidavit from [redacted], dated May 14, 2004. Mr. [redacted] stated that he has known the applicant in New York since 1980, and that he rented a room to the applicant in his house located at [redacted] from 1980 to 1984. Mr. [redacted] provided a copy of his New York State identification card as proof of his identity.

While Mr. [redacted] and Mr. [redacted] have provided specific addresses of residence for the applicant during the requisite period, the affidavits are otherwise essentially identical to the seven other affidavits submitted in support of the application and therefore deficient for the reasons already discussed above. Since the applicant failed to indicate his actual addresses of residence on his Form I-687 application, the information contained in the affidavits from Mr. [redacted] and Mr. [redacted] was not verifiable. Neither affiant submitted corroborating evidence, such as a signed lease agreement for the properties in question, or evidence that they in fact owned the properties or otherwise were in a position to lease them during the requisite period.

4. A Social Security Statement for "[redacted]" dated August 30, 2000. The applicant only submitted the first page of this statement, and there is no identifying information on the statement, such as a social security number. The applicant stated on his Form I-687 that he has utilized the name "Felix Sanchez" as an alias. However, the applicant did not provide proof of common identity as required by 8 C.F.R. § 245a.2(d)(2)(ii), such as a document issued in the assumed name

which identifies the applicant by photograph, fingerprint or detailed physical description, or affidavits from persons who attested to the applicant's use of the assumed name. Moreover, none of the affiants indicated that they know the applicant as [redacted] or [redacted]

The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on April 26, 2006. The director issued a Notice of Intent to Deny (NOID) the application on this date. The director observed that the applicant had not provided any evidence in support of his application other than personal affidavits that appeared to be neither credible nor amenable to verification. The director noted that the affidavits, such as that from [redacted], did not include any proof that the affiant had personal knowledge of the events being attested. The director noted that attempts to contact Mr. [redacted] were unsuccessful because the telephone number he provided had been disconnected. The director indicated that [redacted] was contacted but could only confirm that the applicant was born in Peru, lived in Queens and that he had worked in a bakery. Thus, the director found that the declaration Mr. [redacted] provided was severely lacking in credibility and probative value. The director granted the applicant 30 days in which to submit additional evidence in support of his application.

In a response dated May 25, 2006, counsel for the applicant explained that [redacted] had changed his telephone number subsequent to providing an affidavit for the applicant. He further explained that [redacted] has maintained a friendship with the applicant but "not a familiar relationship." Counsel stated that Mr. [redacted] would have knowledge of the applicant's working status, but not his personal life. The applicant submitted the following additional evidence in response to the NOID:

1. Affidavits from [redacted] These affidavits were signed in May 2006 and are identical in content to the affidavits from 2004 that were submitted with the initial application filing. Each affiant certified that they have known the applicant in the United States since 1980, that he has been living in New York since that time, and that he is a "good person, good friend and very hard worker." Each affiant provided proof of his or her identity and a contact telephone number. None of the affiants stated how, when or under what circumstances they first met the applicant, how they date their acquaintance with the applicant, what their relationship with him is, or how frequently they had contact with him during the requisite period. None of the affiants states that they have direct, personal knowledge of the applicant's addresses of residence in the United States, and none of them provide any proof of their relationship with the applicant, any details regarding the events and circumstances of the applicant's life in the United States or any other information that would lend credibility to their claims of knowing the applicant as a "good friend" for a period of 24 years. Several of the affiants were children in 1980 and it is unclear how they came to be good friends with the applicant at that time. Given these deficiencies and the significant lack of detail, these affidavits are severely lacking in probative value.

2. A notarized letter from [redacted], who states that he has known the applicant since 1980. Mr. [redacted] stated that he worked with the applicant at the same shop as a mechanic in 1980, and that he has owned the shop since 1997 when the former owner, [redacted]

[redacted] passed away. As noted above, the applicant did not identify any employers on his Form I-687 and simply indicated that he was self-employed. He stated during his interview with a CIS officer that he painted cars from 1979 to 1983 and it appears that he mentioned the name [redacted]" If the applicant was employed at this shop for four years, it is unclear why he did not indicate this information on his Form I-687. 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). Regardless, notwithstanding this omission or inconsistency on the part of the applicant, Mr. [redacted] statement does not mention the applicant's duties while employed at the shop or his dates of employment. At most, he confirmed that he worked with the applicant in 1980, but his statement is insufficient to establish the applicant's continuous residence in the United States during the requisite period. The affiant provides no information that would suggest that he had direct, personal knowledge of the events and circumstances of the applicant's residence after 1980.

3. A notarized letter from [redacted] who stated that he has known the applicant since 1981. He stated that the applicant worked for his business, "[redacted]" located in [redacted] New York as a handyman for two days per week from 1981 to 1984. He provided a copy of his New York driver license as proof of his identity. Although he indicated a willingness to provide additional information by telephone, he provided an invalid contact number. 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. The employment letter from Mr. [redacted] does not meet these requirements. Furthermore, if the applicant was in fact employed by this company, even on a part-time basis, over a four-year period, it is unclear why this employment was not indicated on his Form I-687, where the applicant indicated that he was self-employed since his arrival to the United States. The applicant did not mention this employment during his interview with a CIS officer. Because it is inconsistent with the applicant's own statements, does not meet the regulatory requirements, and is not amenable to verification, Mr. [redacted] letter is severely lacking in probative value.

4. A new notarized letter from [redacted] dated May 22, 2006, which is identical to his previous letter of May 2004, and a letter from [redacted], who certified that he has known the applicant since 1981, that the applicant resided in New York since 1980, and that his father rented a room to the applicant at [redacted], New York. [redacted]

[redacted] letter is essentially identical to the letter previously provided by [redacted] although he does not provide the applicant's dates of residence at the claimed address. It is noted that the applicant mentioned during his interview with a CIS officer that he had lived with [redacted] However, due to the lack of detail in the statements from [redacted] and [redacted] the applicant's failure to indicate his addresses on his Form I-687, and the lack of any corroborating evidence of the applicant's residence at the address provided, these statements can be given minimal evidentiary weight.

5. Photocopies of photographs, only some of which are dated. The photographs with date stamps appear to have been taken in 1989, 1994 and 1996. While the applicant appears in most of the photographs, there is insufficient proof that they were taken in the United States during the requisite period. The probative value of such photographs in establishing the applicant's continuous residence is therefore extremely limited.

6. Copies of pay stubs for [redacted] for the months of March 1987, July 1987, December 1987, January 1989, June 1989, December 1989, January 1990, and July 1990. The pay stubs from 1990 identify the employer as [redacted] As noted above, the applicant did not provide proof of common identity as required by 8 C.F.R. § 245a.2(d)(2)(ii), such as a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description, or affidavits from persons who attested to the applicant's use of the assumed name. Moreover, none of the affiants indicated that they know the applicant as [redacted] In addition, the applicant indicated on his Form I-687 that he has been self-employed since entering the United States through the date on which he filed his application. Because of these deficiency and the unresolved inconsistency between the applicant's statements and the evidence submitted, these pay stubs cannot be clearly associated with the applicant and will be given no evidentiary weight.

The director denied the application on July 5, 2006. In denying the application, the director found that the information and documentation submitted were insufficient to overcome the grounds for denial as stated in the NOID. The director observed that the affidavits submitted in response to the NOID, like the affidavits submitted previously, appeared to be neither credible nor amenable to verification, as well as significantly lacking in probative value. The director stated that numerous attempts to contact all of the affiants were made, and that only Mr. [redacted] could be reached.

The director stated that Mr. [redacted] confirmed that he had known the applicant since 1982, and indicated that the applicant was working in a supermarket and for a cleaning company when he first met him. The director noted that this information was contradicted by the information on the applicant's Form I-687, by the applicant's own oral testimony, and by the testimony of other affiants. The director determined that the affidavits submitted were deficient for the purposes of establishing the applicant's eligibility for legalization.

The director acknowledged the applicant's submission of pay statements for "[redacted]," and the undated photographs. The director observed that the applicant had not provided any evidence that he had

taken on the name of [redacted] at any time in the past. The director also found the photographs to be without probative value because it was impossible to determine whether they were taken in the United States during the requisite period. The director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, counsel for the applicant argues that "Officers today are asking for documents nobody could produce." Counsel objects to the director's characterization of the submitted affidavits as "testimonials in the form of boilerplates," and implies that the applicant prepared the affidavits himself to the best of his abilities. However, the applicant and counsel were given adequate notice that the brief, general affidavits submitted were not sufficient to meet the applicant's burden of proof in this matter. Although additional affidavits were obtained for submission in response to the NOID, no attempt was made to correct the deficiencies addressed by the director therein. As a result, all of the affidavit evidence submitted by the applicant in support of his claim of residence in the United States for the requisite period is of limited to no probative value because these documents are uniformly lacking in critical details and specific information directly relating to his claim of residence. As discussed above, the record also contains inconsistent statements and testimony regarding the applicant's employment history in the United States that have not been resolved.

Counsel alleges that CIS was unable to contact the affiants because an officer called them at a time when they were at work. Counsel further asserts that Mr. [redacted] has known the applicant since 1982 and that he has knowledge that the applicant has used the name "[redacted]" Counsel offers no evidence in support of these claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further asserts that the director wrongfully rejected the photographs as valid evidence of the applicant's continuous residence in the United States. The applicant re-submits copies of some of the previously submitted photographs, with handwritten notations regarding dates and people depicted in five of the photographs. The dates added are in 1986, February 1987, March 1989, and 1989. The location where the photographs were taken remains unclear, and only three of the photographs fall within the requisite period. This new information is insufficient to overcome the reasons stated for denial. When considered in light of the totality of the evidence in the record, there are not enough clearly dated photographs taken in the United States during the requisite period to corroborate the applicant's claim of continuous residence in the United States.

The applicant also submits some additional pay stubs for [redacted] for the years 1987 through 1989. The record remains devoid of any evidence that would corroborate the applicant's claim that he has in fact assumed this name in the United States. Again, these documents cannot be clearly associated with the applicant and therefore can be given no evidentiary weight in this proceeding.

Counsel asserts that the applicant tried to find the cleaning company for which he previously worked, but found that "the building does not exist." Counsel does not clarify why the applicant failed to indicate on his Form I-687 or state during his interview with a CIS officer that he ever worked for a cleaning company. Thus, his assertion that the company no longer exists has little merit.

Finally, the applicant has provided on appeal copies of Perusa, Inc. money transfer receipts showing transfer of funds to various individuals in Peru. It is noted that the applicant's name does appear on many of the receipts submitted; however, none of the receipts is dated prior to 1987. These documents are insufficient to corroborate the applicant's claim that he resided in the United States continuously for the duration of the requisite period.

Counsel's statements on appeal, and the new evidence submitted, do not cure the myriad deficiencies of the affidavits and letters submitted in support of this application. As discussed above, although the applicant relies primarily on attestations from individuals, there is nothing in the affidavits to suggest that the affiants have a bona fide relationship with the applicant or any personal knowledge of the events and circumstances of his residence in the United States during 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, this applicant has provided only minimal contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with him. While he has submitted many attestations from affiants concerning that period, none of them are credible, probative or amenable to verification. As such, he cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act. The affidavits are not sufficient to satisfy the applicant's burden of proof.

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 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.