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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEWARK Date: MAY 30 2008

MSC 04 268 10578

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, Newark, and that 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. 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. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the applicant's residence in the United States during the requisite period, but noted that the affidavits were deficient for reasons stated in the Notice of Intent to Deny. The director denied the application, finding that 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 the director required evidence beyond what is required by 8 C.F.R. § 245a.2(d)(3), and failed to follow precedent decisions in applying the "preponderance of the evidence" standard. Counsel submits a brief and additional documentation 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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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) 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 of 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* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 June 24, 2004. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 indicated that he resided at [redacted] in Brooklyn, New York from August 1981 until January 1990. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he was self-employed from an unknown date until 1990, and indicated his occupation as "Livety Cab." The applicant's residence information indicates that he continuously resided in the United States during the requisite period; however, the applicant has failed to corroborate this testimony with credible and probative evidence.

The record of proceeding also contains a Form I-687 application filed by the applicant in 1991. At that **time, he indicated that he had been continously employed by** [redacted] in Irvington, New Jersey since November 1981. This is inconsistent with the instant application, where [redacted] is not listed as an employer is not listed. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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).

To establish eligibility for temporary resident status, 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. The applicant did not submit any contemporaneous evidence of this nature pertaining to the requisite period. 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 for the duration of the requisite period, the applicant submitted several attestations including:

- An affidavit dated April 11, 1990 from [redacted], who stated that she resided in Brooklyn, New York. [redacted] indicated that she has been acquainted with the applicant in the United States and has personal knowledge that he has resided in Brooklyn, New York from December 1981 until the date the affidavit was executed. She stated that she was able to date the beginning of her acquaintance with the applicant based on "friendship."

- A notarized letter dated March 26, 1990 from [redacted] which provides essentially the same information as contained in the above-referenced affidavit.

- An affidavit dated April 16, 1990 from [redacted] who stated that he was a resident of Irvington, New Jersey. [redacted] indicated that he had been acquainted with the applicant in the United States and has personal knowledge that he resided in Brooklyn since October 1981. Where asked to indicate how he dates his acquaintance with the applicant, the affidavit stated "being school mate in Nigeria we know each other, talk on the phone all the time [and] he informed me of his coming."

- An affidavit from [redacted], who stated that he was a resident of Englewood, New Jersey. [redacted] confirmed that he had been personally acquainted with the applicant in the United States, and that the applicant resided in Brooklyn since August 1981. He stated that he is able to date his acquaintance with the applicant because "we are friends."

- An affidavit of witness and support dated June 14, 2005 from a resident of Hillside, New Jersey. He stated that the applicant is his cousin, that he visited the applicant in Brooklyn, New York on November 7, 1981, and that, at that time, he provided the applicant with $700 "for upkeeping of himself."

- An "affidavit of friendship and witness" dated June 14, 2005 from [redacted] a resident of Newark, New Jersey, who stated that he has been a friend of the applicant's for more than 27 years. He stated that he knew the applicant in Nigeria, and that he himself came to the United States in 1982. [redacted] stated that he has known the applicant to be hard working.

- A sworn declaration dated March 27, 1990 from [redacted], a resident of Newark, New Jersey. [redacted] stated that he had known the applicant to be living in Brooklyn, New York since October 1981, and that the applicant is a law abiding and hard working person.

- An affidavit of residence dated January 26, 1990 from [redacted], who stated that he resides at [redacted] in Brooklyn, New York, that the applicant is his cousin, and that the applicant resided with him at that address from August 1981 until the date on which the affidavit was executed. [redacted] indicated that the rent receipts and bills were in his name, and that the applicant contributed to the payment of household bills. He did not, however, provide corroborating evidence that he resided at the listed address for the duration of the requisite period.

Here, although not required to do so, it is noted that none of the affiants provided proof of their identification, or evidence that they resided in the United States during the relevant period, documentation which would tend to lend additional probative value to their statements. None of the affiants provided any meaningful information regarding how they date their acquaintance with the applicant, or how often and under what circumstances they had contact with him during the requisite period. None of the affiants provided a contact telephone number, thus their statements were not readily amenable to verification. Overall, the affidavits are significantly lacking in any details that would lend credibility to the affiants' claims of a long-time friendship with the applicant, and it is unclear on what basis they claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, these affidavits can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The record also contains an undated employment letter from [redacted], president of Fernco Florists, which was submitted in support of the applicant's 1991 Form I-687 application. [redacted] stated that the applicant had been an employee of the company since November 10, 1981. As noted above, the applicant did not indicate on his current application that he ever worked for this employer, yet he previously submitted this employment letter and claimed on a prior Form I-687 that he worked as a floral designer for this company for a period of nearly ten years. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, although the statement is on company letterhead, it is not notarized, nor is it dated. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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 statement by does not include much of the required information. Specifically, the statement does not include the applicant's address at the time of employment or information regarding employment records. Therefore, the statement will be given very little weight.

The applicant also submitted voluminous evidence relating to his residence in the United States from 1990 until the present time; however, as it is not relevant to the eligibility requirements for temporary resident status pursuant to section 245A of the Act, it will not be discussed here.

On June 12, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant, in which she advised the applicant that the submitted affidavits were insufficient to meet the applicant's burden of proof. The director noted that the affidavits lacked sufficient detail with respect to describing the affiants' relationship with the applicant, and were not accompanied by proof of the affiant's residence in the United States during the requisite period. The director afforded the applicant 30 days in which to submit additional evidence in support of his application.

In reply, counsel for the applicant submitted a letter dated July 12, 2006, in which he suggested that the director was attempting to apply a standard of proof greater than that of the preponderance of the evidence to the facts of the applicant's case. Counsel submitted a copy of *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989) and requested that the application be approved based on the standard set forth in the decision, based on the evidence of record.

The director denied the application on July 17, 2006. In denying the application, the director stated the following:

> The only evidence you have submitted for the Service to consider is affidavits. You were previously notified that the Service intended to deny your application not because you only submitted affidavits in support of residency claims, but because the affidavits were deficient. Since you failed to correct the deficiencies regarding the affidavits or to submit additional evidence in support of your claim that you resided in the United States throughout the statutory period, your application is hereby denied.

On appeal, counsel for the applicant again asserts that the director required evidence of residence beyond the scope of 8 C.F.R. § 245a.2(d)(3), and failed to follow *Matter of E-M-* and other precedent decisions. Counsel emphasizes that the affidavits were submitted in 1991 and that they "all apparently show the address and relationship of the affiant to the applicant." Counsel re-submits copies of the 1990 affidavits from [redacted] and [redacted]

Upon review, counsel's assertions are not persuasive. While counsel correctly states that failure to provide evidence other than affidavits shall not be the sole basis for finding that an applicant failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above,

the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. This lack of detail was specifically addressed by the director in the NOID, and the applicant made no attempt to provide additional evidence. None of the affiants provided much information beyond acknowledging that they met the applicant in New York in 1981. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his employment 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).

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 affidavits 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.