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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-04-366-11173

Office: LOS ANGELES, CALIFORNIA

Date: NOV 17 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom, Acting 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, Los Angeles, California. 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. The director determined that the applicant had not established by a preponderance of the evidence that he entered the United States before January 1, 1982, and was in continuous residence in the United States for the entire requisite period. 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 asserts that the applicant has submitted credible affidavits to substantiate his claim that he entered the United States in the month of May of 1981 and was in continuous residence in the United States for 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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he 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 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 has resided in the United States for the requisite period, 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).

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.* 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 Supplement to Citizenship and Immigration Services (CIS) on September 30, 2004. 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 his first address in the United States to be at [REDACTED], Cantua Creek, California from May 1981 to April 1984; at [REDACTED], Los Angeles, California from May 1984 to January 1986; and at [REDACTED], Los Angeles, California from January 1986 to January 1991. Similarly, at part #33, he showed his first employment in the United States to be in seasonal agricultural work at [REDACTED] Cantua Creek, California from May 1981 to December 1983 at the annual wage of \$950.00, and in seasonal agricultural work from April 1984 to January 1986 and January 1986 to September 1990 at the two above mentioned Los Angeles, California locations.

The applicant submitted the following relevant documentation:

- A standard form sworn statement made January 16, 2003, by [REDACTED] also known as [REDACTED] and [REDACTED]¹ of Kerman, California who affirmed that he

¹ The director issued several Form I-72 requests for evidence to the applicant for photographs of the applicant on May 23, 2005, and on June 2, 2005, for proof of the affiant [REDACTED]

commenced living in the United States in 1976, and from May 1981 to April 1984 the applicant resided with him rent free at his home at [REDACTED] Cantua Creek, California. The above affidavit does not provide detail regarding how and when the applicant and the affiant met other than the applicant resided with him; or how the applicant supported himself during the requisite period. The inference to be drawn from the documentation provided shall depend on the extent of the documentation and its credibility and amenability to verification. Evidence submitted by the applicant will be reviewed according to its probative value and credibility. The affidavit lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period and it has slight probative value in this matter.

- A standard form affidavit made June 13, 2005, by [REDACTED], that he entered the United States on February 7, 1976 as a resident alien and that he met the applicant for the first time in the month of May of 1981 at [REDACTED], Cantua Creek, California. According to the affiant, he first met the applicant when "I was looking for work." According to the affiant he was unemployed from January 1982 to May 1988. The affiant also states that "I have met the above named individual [the applicant] at our weekly religious functions at San Joaquin." According to the affiant the applicant told him that he entered the United States by crossing from Mexico near San Diego, California. The affiant also checked the statement on the standard form, "We met [the affiant and the applicant] at each other's residence on numerous occasions such as birth day parties, religious ceremonies and social gatherings."

The above affidavits from the same affiant, [REDACTED], provides differing detail regarding how and when the applicant and the affiant met, that is when [REDACTED] was looking for work, when the applicant resided with him, at weekly religious functions or at each other residences on "numerous occasions." Since the applicant resided with [REDACTED] from May 1981 to April 1984, the applicant's residence was [REDACTED] residence. The various statements are inconsistent.

- An affidavit from _____ of Punjab, India, made December 23, 2003, that the applicant is his friend and "That in the Year of May 1981 I was with [REDACTED] when he went to the Foreign Country from Airport Delhi." As is stated in the affidavit, the affiant was not present in the United States during the requisite period but according to the affidavit, the affiant remained in India in 1981 when he accompanied the applicant and saw him off at the Delhi airport for an unspecified foreign country. The affidavit does not provide any evidence that the applicant entered the United States in 1981, or an address where the applicant resided in the United States, or how frequently the affiant had contact with applicant. The affidavit provides no detail to confirm that the applicant resided in the United States during the requisite period and it has no probative value in this matter.

residence. Copies of

passport and the affiant's CIS issued Resident card were

submitted.

The director denied the application for temporary residence on July 22, 2006. In denying the application, the director found that the applicant's testimony and from [REDACTED] statements that the applicant entered the United States in 1981 were not credible. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence of his 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.

On appeal, counsel submitted a brief, re-submitted the two affidavits by [REDACTED] above mentioned and the following relevant documents:

- A standard form sworn statement from [REDACTED] of Los Angeles, California made June 27, 2003, that he has resided in the United States since 1983 and he knows that the applicant has lived in the United States from January 1, 1982 to May 4, 1988. According to the affiant, the applicant lived with him from May 1984 to January 1986 at [REDACTED] Los Angeles, California. According to the affiant the applicant paid his share of the rent and utility bills.
- A standard form sworn statement from [REDACTED] (the statement has an incomplete address that does not state a municipality) made June 14, 2003,² and he knows that the applicant has lived in the United States from January 1, 1982 to May 4, 1988. According to the affiant, the applicant lived with him from 1986 to 1990 at [REDACTED] Los Angeles, California. According to the affiant, the applicant paid his share of the rent and utility bills but no evidence of payments were provided. Mr. [REDACTED] incomplete address given in his statement does not correspond with the affiant's address stated on the affiant's California driver's license accompanying the statement. The statement is not amenable to verification.

These affidavits call into question whether each of the above affiant can actually confirm that the applicant resided in the United States during the requisite period. The above affidavits do not provide detail regarding how and when the applicant and the affiants met; their frequency of contact during the requisite period. While not required, the affiants failed to submit proof that the affiants were in the United States during the requisite period or an explanation and proof of the relationship between the affiant and the applicant. No documents were submitted such as a lease or rent payment for either of the two above mentioned apartments by either the applicant or the affiant or supporting documentation that the applicant resided at the locations stated and paid housing expenses. Credible documentation would be reasonably obtainable evidence such as rent receipts, medical invoices, tax records, utility bills, pay stubs or other such documentation.

- An affidavit from [REDACTED] of Punjab, India, made April 3, 2003, that he the applicant's uncle and was with the applicant when he arrived at Delhi airport in December of 1987 and when the applicant went to America on January 1988 from Delhi Airport.

² The affiant did not indicate when he started living in the United States.

Therefore according to the above affidavit, the applicant's uncle provided no information based upon his personal observation concerning the applicant's residence in the United State during the requisite period. It has no probative value in this matter.

In summary, the applicant has insufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence, and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

According to court documentation in the record, the Los Angeles, California, police department arrested the applicant on August 31, 1999, and charged him on two criminal counts:

- Count 1: 23152(a) VC Misd – under influence alchl/drug in veh.
- Count 1: 23152(b) VC Misd – .08% more wght alchl drive veh.

On September 21, 1999, the applicant was convicted on Count 02 above mentioned. *See* Los Angeles County Court Docket N. [REDACTED]

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of entry to the United States before January 1, 1982, and continuous residence for the entire requisite period, detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.