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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: DALLAS
MSC-06-102-15656

Date: NOV 21 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:
[REDACTED]

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 Benefits 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 Director, Dallas. 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time 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 or she has been continuously physically present in the United States since November 6, 1986. Section 245(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 or she 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and family, affidavits of employment, a letter of credit, a baptismal certificate issued by a church in Texas, a church registration record, and several envelopes addressed to [REDACTED]. The AAO has reviewed each document to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

First, the affidavits from [REDACTED] all contain statements that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the affiants provide sufficient detail which would evidence the applicant’s continuous residency during the relevant period. Specifically, all the above affiants state that they met the applicant during the requisite period, however, they do not indicate they date their acquaintance with the applicant, how frequently they saw him during the requisite period, or provide reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the

relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In further support of his application, the applicant submitted an affidavit from [REDACTED] who indicates that he took the applicant to an Immigration Service office in Arlington, Texas in 1988 to apply for legalization. However, as indicated by the Notice of Intent to Deny (NOID), the Service contacted [REDACTED]. During that contact, the affiant indicated that he could not remember when the applicant came to the United States but he thought it was fourteen or fifteen years previously, which would have been 1991 or 1992.

In response to the NOID, the affiant stated that he must have been misunderstood by the Service since his English language skills were poor. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). **The applicant has not submitted independent objective evidence which resolves this inconsistency. Thus, the affidavits from Mr. [REDACTED] are not probative or credible.**

The record of proceedings contains further inconsistencies. Specifically, the applicant submitted, as evidence of his eligibility, a First Holy Communion Certificate issued on April 27, 1982 by the Rev. [REDACTED] of the Church of Saint Matthew, in Arlington, Texas. However, the Service contacted this church on July 28, 2005 and church officials indicated that there was no First Communion ceremony on that date, and that the certificate did not contain the church's seal and was therefore, likely fraudulent. The credibility of this document is further diminished by another letter in the file, printed on St. Matthew Catholic Church letterhead, indicating that the applicant has been a registered member of St. Matthew Catholic Church since August 3, 1999.

The record also contains the following evidence:

- An affidavit from [REDACTED] who indicates that he met the applicant in June 1986 while the applicant was performing odd jobs around the home of [REDACTED]. He provides no other relevant details.
- A letter from [REDACTED] who indicates that he met the applicant in April or May of 1986 when the applicant performed odd jobs around his home. He provides no other relevant details.

- A letter from [REDACTED] who indicates that he has known the applicant since the applicant arrived in the United States in April 1981. He provides no other relevant details.
- Copies of envelopes with post marks dated in 1987 that do not contain the applicant's name.
- Copies of registered mail and postal money order receipts that do not contain the applicant's name.
- An undated article that shows an individual names [REDACTED] in the picture.
- A receipt from [REDACTED] with the name [REDACTED] dated in 1988.
- A letter from [REDACTED] who indicates that the applicant is his nephew and that he lived with him from May 1981 until the present (April 1990). While he does provide an address in Arlington, Texas and contact information, his statement is void of any other relevant details which support his assertions that the applicant lived with him for nearly 10 years.
- A letter from [REDACTED] on Mac Tools Inc., letterhead, in which the [REDACTED] indicates that the applicant has been a credit customer of his since 1985. Since the applicant was born on [REDACTED] he was 13 years old in 1985. The Service contacted the declarant who indicated that he has never and absolutely would not extend credit to an individual who is 13 years old. Thus, this letter is not credible.

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. It is therefore concluded that the applicant 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.