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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEWARK Date: NOV 24 2008

MSC 05 260 10173

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, Newark. 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.

While it is noted that the director raised the issue of class membership in his decision, the application was adjudicated on the merits. Therefore, the director is found not to have denied the application based on a finding that the applicant was not a class member.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and his counsel asserts that the director did not fully consider the evidence submitted by the applicant.

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 has established that he (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 the applicant's landlord, friends and family, affidavits of employment, receipts, checks received by the applicant during the requisite period, the applicant's son's school records, original airline tickets, original Forms W-2 issued to the applicant during the requisite period, the applicant's Social Security Statement, bank statements, and an attestation from a representative from the applicant's church. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted the following contemporaneous evidence in support of his application: school records that indicate that the applicant's son, [redacted] was enrolled in school in the United States beginning in 1988; W-2 Forms and other tax documents that indicate that the applicant was employed and paid taxes beginning in 1988; a Social Security Earnings Statement that indicates that the applicant began to contribute earnings to the Social Security Administration in 1988; earnings statements from [redacted]c. that begin in 1988; a telephone bill issued to the applicant in February 1988; an earnings statement from [redacted] Convertible Mfg., Inc that indicates the applicant worked in March of 1988; original copies of an airline ticket that indicates that the applicant traveled from Los Angeles to New York in December of 1987; a title and registration for a car issued to the applicant in January 1988; a photocopy of an envelope sent to the applicant in the United States in February 1988; an electric bill issued both to the applicant and to [redacted] in April 1988; proof of car insurance beginning in January 1988; relevant documents that indicate the applicant was in an automobile accident in the United States in March 1988; a receipt that appears to bear the

applicant's name and the date [redacted] a birth certificate for the applicant's son that indicates he was born in Uruguay on [redacted]

Though the applicant has submitted extensive contemporaneous evidence in support of his claim, only one such document pertains to a date prior to December 25, 1987. Though the receipt dated in February 1982 also appears in the record, there is no contemporaneous evidence that indicates that the applicant resided in the United States from 1983 until December 1987 in the record.

The applicant has also submitted a letter from Public Service Electric and Gas Company that indicates that [redacted] was their customer from April 15, 1983 until April 4, 1988. However, as with the employment letter for [redacted] the applicant has not submitted evidence that he and [redacted] are one and the same person. Further, as was previously noted, the applicant has also submitted a bill from this company with both his name and the name of [redacted] name on it. Further, the applicant did not indicate that he had ever used any aliases on his current Form I-687 in the record. Therefore, this letter carries no weight as evidence of the applicant's residence in the United States during the requisite period.

Though the applicant submitted an attestation from the St. Josephs Rectory, which states that the applicant was a parishioner of good standing of the parish church as of October 1991 when the letter was issued, the letter fails to state that the applicant was a member of the church during the requisite period. Therefore, it carries no weight as evidence that the applicant resided in the United States during the requisite period.

Affidavits from [redacted] state that the affiants have known the applicant since 1982 and 1981 respectively, when they met him at family reunions. However, the affiants did not provide other details regarding the nature of their relationships with the applicant or state where they first met the applicant or indicate whether they first met him in the United States or elsewhere. They attest to the applicant being physically present in the United States during the required period, but are lacking in detail such that they fail to establish the applicant's continuous unlawful residence in the United States for the duration of that time. 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 witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for 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.

The applicant also submits an affidavit from [redacted] who states that the applicant rented a residence from him located on [redacted] in Patterson, New Jersey from December 10, 1981 to April 13, 1983. This affiant also submits rent one original rent receipt for each year of the applicant's residence at that address. However, [redacted] does not state the frequency with which he saw the applicant during the requisite period or whether there were periods of time when the applicant was absent from that address of residence. Therefore, though this affidavit carries some weight as evidence that the applicant resided in the United States from 1981 to 1983, it carries no weight as evidence of his residence in the United States subsequent to that time.

The record contains three employment affidavits from the applicant's alleged former employers during the requisite period.

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.

Two of the employment letters indicate that the applicant worked using his own name and provide his address of residence in the United States during his employment.[1] These letters are from [redacted] of P.L.V. Auto Body Inc., located in the Bronx, New York and from [redacted] of R.L.M Auto Body, Inc., located on [redacted] Both companies claim to have employed the applicant for precisely the same time period, from December 15, 1981 to May 20, 1985. Both companies state that the applicant earned the exact same salary, $120.00 per week during his time working there. The companies also both state that the applicant's duties with their companies were "Upholstery, Customizing cars" and that the applicant, "performed his job excellent." The manager of R.L.M. Auto Body states that the applicant worked for that company for 40 hours per week and the manager of P.L.V. does not specify how many hours they employed the applicant per week. The letter from P.L.V. Auto Body Inc. was submitted with photocopies of checks issued to the applicant by P.L.V. Auto Body, Inc. in 1982. [redacted] igned these checks. It is noted that her last name is the same as the last name of the applicant's employer at R.L.M. Auto Body, Inc.

Though it is possible that the applicant worked for two different companies doing precisely the same work and worked for both beginning and ending on exactly the same date earning exactly the same salary at each, neither of these letters states how their authors determined the applicant's start and end dates with their companies or whether they were taken from official records. Further, these letters are not consistent with work that the applicant indicated he performed on his current or previous Forms I-687 or at the time of his

[1] Both of these letters are dated October 5, 1987.

interview regarding his current Form I-687 application with a Citizenship and Immigration Services (CIS) officer.

The third employment letter in the record states that [redacted] worked for [redacted] Painting Company from June 1985 until October 1987 as a painter. Though the applicant submitted this letter, he has not submitted documentation that establishes that he and [redacted] are one and the same person. He has also stated that he has not previously used any aliases on his Form I-687. Therefore, this letter carries no weight as evidence that the applicant resided in the United States during the requisite period.

The applicant has submitted testimony regarding his aliases and his employment on two Form I-687s in the record and during his interview regarding his Form I-687 that he submitted pursuant to the CSS/Newman Settlement Agreements. On his Form I-687 submitted in September 1991, the applicant stated that he had previously used the names [redacted] He further provided the names of his employers, Salang Convertible and Shita Services, beginning in January 1988 and then for the duration of the requisite period. The applicant did not indicate employment prior to January 1988 on this form.

On the applicant's Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements, he stated that he had never used any aliases. While the applicant stated that he had worked in the United States, he did not indicate that he was employed prior to 1997 on this Form I-687.

At the time of the applicant's interview with a Citizenship and Immigration Services (CIS) immigration officer regarding his Form I-687 application, notes taken from the officer indicate that the first employment indicated by the applicant was for, "Sleepover Sofas," from 1988 to 1992.

The employment letters and the applicant's statements regarding both his aliases previously used and his employment provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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).

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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, supra.*

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.