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U.S. Citizenship
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FILE:

MSC-06-061-10670

Office: NEW YORK

Date: SEP 05 2008

IN RE:

Applicant:

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:

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. 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 had continuously resided in the United States* in an unlawful status for the duration of the requisite period. Specifically, the director noted that the affidavits submitted were neither credible nor amenable to verification. 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, the applicant asserts that the Service has imposed additional requirements for the affidavits in excess of either the regulations or the terms of the settlement agreement. He further asserts that he is eligible for the benefit sought based upon the evidence in the record.

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 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).

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 or her 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 November 30, 2005. 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 in Brooklyn, New York from September 1981 until June 1988.

In support of his claims of continuous residency, the applicant submitted the following documentation:

- A letter from [REDACTED] who stated that he has known the applicant for “more than 25 years,” and that he first met the applicant in September 1981 when the applicant was residing with him at [REDACTED] in Brooklyn. He provides no additional details regarding his relationship with the applicant or the applicant’s continuous United States residency. The statement lacks sufficient details that would lend credibility to an alleged 25-year relationship with the applicant. Additionally, the declarant does not indicate how frequently he had contact with the applicant during the relevant period. Thus, this statement will be given nominal weight.

- A notarized declaration from [REDACTED] who indicated that he currently resides in Brooklyn, New York. Mr. [REDACTED] stated that he met the applicant at the end of 1981 and that they resided together at an address in Brooklyn in November 1985 for about three years. It is noted that the declarant fails to stated with any specificity where he first met the applicant, how he dates his acquaintance with him, or whether he has direct, personal knowledge of the address at which he was residing prior to November 1985. For these reasons, this declaration has limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.
- A letter dated April 15, 2006 from [REDACTED], which is printed on the letterhead of Whitey Produce Co. Inc. located in Brooklyn, New York. Mr. [REDACTED] states that he first met the applicant in December 1981 while the applicant was working part-time as an electrician. He further states that in May 1987 they were going to open a small business together but that the applicant was unable to secure a loan. He indicated that he has done a lot of business with the applicant and that he attended his wedding in 2002. However, [REDACTED] did not indicate where or how he met the applicant, or how frequently or under what circumstances he saw the applicant during the requisite period other than “occasionally going out to dinner and enjoying our days off together,” nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.
- A letter from [REDACTED] r typed on the letterhead of the Catafago Law Firm, P.C.. Mr. [REDACTED] stated that he met the applicant in 1985 in Brooklyn, New York where the applicant was working in a grocery store. Although the declarant does provide some relevant details regarding his relationship with the applicant since 1985, including that he represented the applicant in legal matters and that he also knows the applicant's brothers, the declarant does not provide any addresses where the applicant resided and worked in the United States, or how frequently he had contact with the applicant. Given the fact that [REDACTED] represented him as an attorney at law, it is not credible that he would not have any documentation verifying the applicant's residency. Furthermore, the Catafago Law Firm website indicates that the firm has only been operating since 1990 and [REDACTED] has only been admitted to practice since 1999. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims of continuous residency for the duration of the requisite period.
- A notarized declaration from [REDACTED] who indicated that he currently resides in Brooklyn, New York. Mr. [REDACTED] indicated that he first met the applicant in the end of 1981 at the Big Apple grocery store when the applicant was working as a delivery boy. It is noted that the declarant fails to state with any specificity how he dates his acquaintance with the applicant or whether he has direct, personal knowledge of the address at which he was

residing during the relevant period. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarant's claim to have a friendship with the applicant spanning 25 years. For these reasons, this declaration has limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

- A letter from [REDACTED] who stated that he has known the applicant since October 1981 when he met him while he was working in a small grocery store. He also indicated that he helped the applicant rent an apartment on [REDACTED] in Brooklyn since the applicant did not have a social security number. He asserts that the applicant remained at that address from November 1985 until 1988. He provides no additional details regarding his relationship with the applicant or the applicant's continuous United States residency. The statement lacks sufficient details that would lend credibility to an alleged 25-year relationship with the applicant; and it is not accompanied by any evidence that [REDACTED] resided in New York for the relevant period. Additionally, the declarant does not indicate how frequently he had contact with the applicant during the relevant period. Thus, this statement does provide some evidence of the applicant's residency in Brooklyn, New York since 1985 but does not provide any evidence of either his initial entry prior to January 1, 1982 or his continuous residency for the period 1981 until 1985.
- A handwritten letter, which is not dated, in which the declarant, [REDACTED], President of A&W Produce stated that the applicant "has been working with us as a part-time manager." Given the fact that no time period can be established because the letter is not dated, no weight will be given to this evidence.
- Finally, a letter from [REDACTED] dated November 8, 2005, in which the applicant stated that he met the applicant in 1985 when he helped him rent an apartment. He provides no other relevant details regarding the applicant's residency in the United States during the relevant period. He does not state that he has personal knowledge of the applicant's entry prior to January 1, 1982 or his continuous residency in the United States thereafter. This letter will be given nominal weight.

Citing the reasons explained above, the director denied the application for temporary residence on May 24, 2006. On appeal, the applicant asserts that the Service has imposed additional requirements for the affidavits in excess of either the regulations or the terms of the settlement agreement and that the evidence he submitted was not given the proper weight. He does not provide any additional proof of either his initial entry prior to January 1, 1982 or his continuous residency for the duration of the requisite period.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a

basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, 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 such basic and necessary information. As discussed above, the declarants' statements are significantly lacking in detail and do not establish that they actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the declarants' provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the declarations 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 previous testimony that makes him ineligible for the benefit sought.

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.