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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATLANTA Date: SEP 11 2008
MSC-05-224-10589

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. All documents have 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, Atlanta. 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. 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 decision of the District Adjudication Officer is capricious and an abuse of discretion and that his findings were not reasonably grounded or found in the record. In support of these contentions, no additional evidence was submitted.

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 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 May 12, 2005. On his Form I-687, Application for Status as a Temporary Resident, which he also signed under penalty of perjury, the applicant indicated he lived at the following addresses during the requisite period:

February 1981 to June 1984: [redacted]
July 1984 to July 1986:
August 1986 to May 1989:

In support of his application, the applicant submitted the following evidence:

(1) Affidavit dated June 14, 2001 from [redacted] claiming that he has known the applicant since December 1981. The affiant claims that the applicant was a flower vendor and that he was one of his customers. The affiant further claims that the applicant suddenly disappeared in July 1984, and returned in August 1986. According to the affiant, the applicant claimed that he had been in New York during that period. Although [redacted] claims to have personal knowledge that the applicant lived in the United States since December 1981, he does not state the address at which he knew him. He also fails to state how he dates their initial acquaintance or provide any additional details of their alleged 24 year relationship.

(2) Affidavit dated June 14, 2001 from [redacted], claiming that she has personally known the applicant since June 1982. The affiant claims that applicant was a flower vendor and that she was one of his customers. The affiant further claims that the applicant left for New York in July 1984 and returned to Dalton, Georgia in August 1986. According to the affiant, she helped him secure a place to live upon his return at [redacted]. Finally, the affiant claims to have knowledge of the applicant's continued presence because she "regularly met him" except for May 1987 when he visited Pakistan. She does not indicate where the applicant was living prior to August 1986 and she provides no additional details of their alleged 21 year relationship.

(3) Affidavit dated August 21, 1990 from [redacted], verifying the applicant's departure from the United States from May 4, 1987 to May 28, 1987, in order to visit family. No additional information, such as the basis of this information or the source of her knowledge of the applicant's departure, is provided.

(4) Affidavit dated August 17, 1990 from [redacted] claiming that she knew the applicant from August 1986 to May 1989. She claims that during that period, he resided with her, and worked as a flower vendor. She does not state how or when she met the applicant, or provide any further details of the applicant's residency during the relevant period.

(5) Undated affidavit from [redacted], verifying that the applicant was living with him from February 1981 to June 1984. He further claims that the applicant was employed as a flower vendor in a restaurant. He does not state how he met the applicant, or provide any further details of the applicant's residency during the relevant period.

(6) Undated letter from [redacted] and [redacted], located in Loudonville, New York, verifying that the applicant was employed by the company as a cleaner from July 1984 to July 1986 for $125 per week. No additional information is provided, such as the address at which the applicant resided during that period. Although the statement is on company letterhead, it is not notarized. 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 [redacted] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

(7) Affidavit dated August 16, 1990 from [redacted] of [redacted], claiming that he knew the applicant from February 1981 to June 1984 as a flower vendor. The affiant does not state that he has direct, personal knowledge of the applicant's continuous residency during the requisite period, he does not state where the applicant resided during the relevant period, and he does not indicate how he dates their initial acquaintance.

(8) Lease agreement dated February 1, 1981 between the applicant and [redacted], in which the applicant agreed to lease the property [redacted], Dalton, Georgia 30722 for a period of 2 years at a rate of $125 per month.

(9) Affidavit dated February 22, 2005 from [redacted], claiming that he has known the applicant since June 1981. He indicates that they became acquainted when his car stalled "due to some mechanical problem and [redacted] helped me push it." He indicates that he visited him at [redacted] where he was living with friends. He states that in July 1984, the applicant left for New York and returned in July 1986. It is noted that the applicant indicated on his I-687 application that he resided at the [redacted] address only from February 1981 until June 1984 and the affiant does not indicate that he ever visited him at any other address.

(10) Affidavit dated March 4, 2005 from [redacted], claiming that she has known the applicant since December 1981. She claims that during that period he worked as a flower vendor and she was his permanent customer. She does not indicate where the applicant resided during the relevant period or provide any further details of the applicant's residency during the relevant period.

On June 21, 2007, CIS issued a Notice of Intent to Deny (NOID). The district director noted that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Specifically, the director noted that the applicant was interviewed by CIS in connection with this application on January 12, 2006. The director noted that during this

interview, the applicant submitted affidavits from individuals stating that they had known the applicant since 1981. The director noted that these affidavits lacked sufficient detail to substantiate the applicant's claims of continuous unlawful residence, stating that none of the affiants indicated how they knew the applicant resided in the United States, and how frequently they saw the applicant during the relevant period.

On July 16, 2007, the applicant submitted a rebuttal to the NOID. In his rebuttal memorandum, the applicant questioned whether CIS contacted the affiants to verify their statements and stated that the director was acting "capriciously in arbitrarily treating the applicant's evidence different than other applicant's who were in the same situation." No additional evidence was submitted in response to the NOID.

The director denied the application on November 20, 2007, noting that there was insufficient evidence to show that the applicant entered and maintained continuous unlawful status in the United States from before January 1, 1982, the beginning of the qualifying period, through 1988, or that he had maintained continuous physical presence n the United States from November 6, 1986 through May 4, 1988. The director further noted that a complete review of the record shows that the affiant, completed a signed sworn statement on June 14, 2001, which was submitted with the applicant's previously filed Form I-485 Application to Adjust Status under the LIFE Act. On January 13, 2003, [redacted] was contacted by CIS. During this contact, [redacted] indicated that his sworn statement was not accurate, that he had not known the applicant since 1981, but rather, he had known him for 6 to 10 years. Even though [redacted] subsequently submitted another sworn statement that is dated March 4, 2005 which is identical to the first sworn statement, the inconsistency between his written statement and his oral testimony is noted.

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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. In this case, no independent, objective evidence has been submitted which would resolve the inconsistency in [redacted]s testimony.

It is also noted that CIS contacted several other affiants to verify the statements contained in the affidavits provided. Specifically, [redacted], with whom the applicant claimed to have had a two-year lease, claimed that no one lived with him during that period and that neither he nor his wife knew the applicant. This seriously impairs the credibility of a separate affidavit allegedly prepared and executed by [redacted] on behalf of the applicant. In addition, [redacted]s and [redacted] both indicated that contrary to the statements in their affidavits, they had not known the applicant since 1981 as claimed. Rather, they indicated that they knew him for approximately 6 to 10 years. Since the phone interviews with [redacted] and [redacted] took place on January 13, 2003, it stands to reason that these persons did not become acquainted with

the applicant until 1993 at the earliest. Although they were afforded an opportunity to rebut these findings, neither counsel nor the applicant addressed these inconsistencies on appeal.

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 affidavits of [redacted] and [redacted] have been discredited. Moreover, [redacted], when contacted by CIS on January 13, 2003, also claimed that she had not known the applicant since June 1982 as claimed, but rather became acquainted with him in the early 1990's. As stated above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

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, and the inconsistent statements from the affiants, 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.

It is also noted that on November 14, 1997, the Whitfield County, Georgia Sheriff's Office arrested the applicant for the charges of Terroristic Threats, a felony, and Criminal Trespass, a misdemeanor. (Case No. [redacted]. Due to insufficient evidence and an absence of independent witnesses, the State of Georgia filed a motion to enter a Nolle Prosequi in the case, which was granted by the Superior Court of Whitfield County, Georgia, on September 28, 1998. These

charges do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.