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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 245 10520

Office: NEW YORK

Date: **NOV 02 2009**

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:



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 the matter 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.


Perry Rhew
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, New York, New York, and 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, counsel asserts that the affidavits submitted by _____ and _____ are not contradictory. Counsel submits an additional affidavit from another affiant in support of the appeal.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 applicant 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 (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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A letter notarized March 11, 1993, from the secretary of [REDACTED], New York, who indicated that the applicant has been an active member of its organization since July 1983.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since 1982 and attested to the applicant’s entry and continuous residence in the United States prior to January 1, 1982.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since 1982 and attested to the applicant’s entry into the United States prior to 1982 and to the applicant’s absence from the United States during September and October 1987.
- A notarized affidavit from [REDACTED] who indicated that the applicant has been a close friend since 1982. The affiant indicated that the applicant often visited him and occasionally he worked at construction jobs with the applicant.
- A notarized affidavit from an affiant with an indecipherable name, who attested to the applicant’s entry and continuous residence in the United States prior to January 1, 1982.

- A notarized affidavit from [REDACTED] who indicated that the applicant resided with him from April 1981 to May 1993 at [REDACTED]. The affiant indicated that the applicant shared the rent and utility bills.
- Notarized affidavits from [REDACTED] and [REDACTED] who indicated that they have knowledge of the applicant residing in the United States since 1981 and 1982, respectively. The affiants indicated "I know he works odd jobs" as they have seen him working, distributing fliers and advertisement materials. The affiants attested to the applicant's moral character.
- A notarized affidavit from [REDACTED] who indicated that he was a co-worker of the applicant from 1981 to 1985 as a flier distributor. The affiant indicated that he remained in contact with the applicant after 1985.

On October 25, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the Service was unable to contact some of the affiants, and the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was also advised that he had failed to submit credible evidence of an adult responsible for his care and financial support as he was a minor during a portion of the requisite period.

The applicant, in response, submitted:

- A notarized affidavit from [REDACTED] who indicated that she first met the applicant in Brooklyn, New York in November 1981. The affiant indicated that the applicant "lived next to my friend's home in Brooklyn. My friend, [REDACTED], introduced me with [the applicant] at a Thanks Giving Party." The affiant indicated that she has seen the applicant numerous times in Brooklyn and Manhattan since November 1981.
- A notarized affidavit from [REDACTED] who indicated that he first met the applicant in June 1981 in Manhattan, New York. The affiant indicated the applicant "used to stay with one of his country men for distributing flyers near my job place." The affiant indicated that he occasionally saw the applicant and finally became a good friend of the applicant.
- A notarized affidavit from [REDACTED] who indicated that he first met the applicant at his residence in New York in November 1981 and the applicant has visited his home on numerous occasions since 1981.
- A notarized affidavit from [REDACTED] who indicated that he first met the applicant in New York in October 1981 at a community event and has remained in contact with the applicant since that time.

The director, in denying the application, noted, in pertinent part:

The affiants furnished a vague and recited recollection of unverifiable events. For example, according to our records, your date of birth is March 26, 1967. You were a

thirteen year old child in 1981. Yet [REDACTED] attests to have met you in 1981 in Manhattan distributing flyers near his job. In her statement [REDACTED] attests to have met you in 1981, and to have resided next to [REDACTED]. The statements can not be accurate and objective.

In addition, you did not provide credible affidavits of any adult responsible for your care and financial support. It is expected for your application to include some school record, immunization or medical records as proof of your residence, given that you were a minor during the statutory period.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and denied the application on December 12, 2007.

On appeal, counsel submits an affidavit from [REDACTED] who indicated that he entered the United States on May 22, 1981 and through the applicant's father, he learned that the applicant "came to the U.S. in April 1981. After I came here, he saw me the next day. I was legally responsible for him in this country." The affiant indicated that he visited the applicant at his apartment, [REDACTED] "as needed where he lived with other adults."

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

While an application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. 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). Casting doubt to the applicant's claim that he resided in the United States continuously during the entire requisite period is the fact that the affidavits from the affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The letter from [REDACTED], has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiant does not explain the origin of the information to which he attests. Further, the applicant did not list any affiliation with a religious organization during the requisite period on his Form I-687 applications.

The record contains a copy of the applicant's passport, which appears to have been altered. Specifically, the year the applicant had previously traveled on an earlier passport appears to have been altered to indicate 1980.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I. & N. Dec. 582, 591 (BIA 1988).

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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant 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.