U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: NOV 18 2009

MSC 06 081 10698

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 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, Houston, Texas, 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 argues that the director: 1) erroneously denied the application due to the fact the evidence was mainly affidavits; 2) failed to analyze the evidence presented by the applicant; and 3) failed to use due diligence in her attempts to contact the witnesses.

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.

At the time the applicant filed his Form I-687 application, he provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated January 31, 2006, the applicant, in an attempt to establish continuous unlawful residence since prior to January 1, 1982 through the date he attempted to file his application, submitted:

- An affidavit from who indicated that she has been acquainted with the applicant since 1981. The affiant indicated that the applicant used to reside with her grandmother, [redacted], and she used to see the applicant when she visited her grandmother.
- An affidavit from [redacted] who indicated that she has known the applicant since 1987 and attested to the applicant's residence at [redacted]
- An affidavit from who indicated that she has known the applicant since 1981 The affiant indicated that the applicant "was brought by his brother [redacted] from Mexico to live with me." The affiant indicated that the applicant was in her care until 1984.
- An affidavit from [redacted] who indicated that the applicant resided with her at [redacted] from December 1984 to May 1987. The affiant indicated that she received money from the applicant's brother to take care of

- An affidavit from [redacted] who indicated that in June 1987, the applicant came to reside with him at [redacted]. The affiant indicated that the applicant was previously under the care of [redacted]
- An affidavit from a brother, [redacted] who indicated from 1981 to December 1984 he left the applicant in the care of [redacted] because the applicant was young and he had work in another state. The affiant indicated that from December 1984 to May 1987, the applicant resided with [redacted]. The affiant indicated that he financially supported the applicant.
- An affidavit from [redacted] in Houston, Texas, who indicated that the applicant was in his employ from May 5, 1987 to March 15, 1990.

The applicant submitted several other affidavits that have little probative value as they attest to the applicant's residence and physical presence in the United States subsequent to the period in question.

On November 8, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the Service attempted to verify the affidavits provided, but the majority of the telephone numbers were disconnected. In speaking to [redacted] on October 29, 2007, the affiant indicated she probably met the applicant in Houston in 1995 or 1996, but was not sure and that the applicant resided with her for only a few months. In speaking to [redacted] on October 29, 2007, the affiant indicated that he met the applicant, approximately 15 years ago, when he hired the applicant to work at his shop. The applicant was advised that the verbal statement from [redacted] contradicted her affidavit, which indicated the applicant resided with her from December 1984 to May 1987. The applicant was advised that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through the date he attempted to file his application.

Counsel, in response, submitted a copy of the affidavit from that was previously provided along with the above mentioned affiants' telephone numbers and addresses. Counsel also submitted an additional affidavit from [redacted] who indicated, in pertinent part:

> I told the office that I had probably meet [sic] you around 1984 or 1985. That I was not sure. That I needed to consult my records. That he had lived with me for several or a couple of years.
>
> That I was not sure of the above, that I needed to wait and think, check my records. That we were talking about events that happened 20 something years ago.

The director, in denying the application, noted that: 1) no attempt was made to address the discrepancy in [redacted] affidavit and his verbal statement; 2) the record of proceedings reflects that [redacted] informed the Service officer that she met the applicant in 1995 or 1996; 3) the affidavit from [redacted] must be viewed as having a self-evident interest in the outcome of proceedings, rather than as an independent, objective and disinterested third party; 4) several attempts to contact [redacted] and [redacted] proved unsuccessful; and 5) in speaking

to [redacted] the affiant informed the Service officer that she met the applicant sometime in 1992 at the home of [redacted] The affiant further informed the Service officer that her daughter who was born in 1981 was eight or nine years of age at the time she met the applicant. The director determined that the affiant therefore had met the applicant in 1989 or 1989. The director concluded that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on December 12, 1997.

Counsel's assertion that the director failed to use due diligence in her attempts to contact the affiants has no merit. The Service had previously contacted [redacted] and [redacted] and the record reflects that the director attempted on three occasions to contact [redacted]; however, no one answered the telephone number. In addition, no one answered the cellular number for [redacted] and her work telephone number was either busy or no one answered. Likewise, no one answered the telephone number for [redacted] on October 29, 2007, and as of December 12, 2007, the telephone number provided by [redacted] had been disconnected. Contact with the remaining affiants is not relevant as they attested to the applicant's residence and presence in the United States subsequent to the requisite period.

The affidavits from and [redacted] raise questions to their authenticity as the applicant, on his Form I-687 application signed December 15, 2005, did not claim residence at [redacted] or employment with any entity until 1995.

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 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.