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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] MSC 06 101 19930 Office: NEW YORK Date: SEP 10 2008

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. The file has been returned to the National Benefits Center. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On August 7, 2006, 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, or *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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.[1]

The director denied the application, finding that the applicant had not met his burden of proof to establish, by a preponderance of the evidence, that he had continuously resided in the United States in an unlawful status during the requisite period. In a Notice of Intent to Deny (NOID) dated June 28, 2005, the director found that the only evidence the applicant submitted to support the claim that he entered the United States without inspection in September 1981 was two affidavits and an employment letter. The director found that the affidavits from [redacted] and [redacted] were not amenable to verification. The director also found that the employment letter from S & S Construction was not credible because the company was not registered in the State of New York as purported. The director granted the applicant 30 days from the date of the NOID to submit additional evidence in response to the above determination. On August 7, 2006, the director stated that the applicant failed to submit additional evidence for consideration in making a decision in his case within the time allotted and denied the application for the reasons stated in the NOID.

On appeal, counsel for the applicant asserts that the applicant was given 30 days to provide additional evidence in support of the application. He asserts that the applicant filed the response to the NOID on July 27, 2005, but the Service received it late. Counsel requests that the AAO not let a technicality of a matter of days, even hours, stand in the way of a just and equitable decision. Counsel further requests that the AAO remand the case to the district director with instructions to review the documents submitted in rebuttal of the NOID.

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 periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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.12(e).

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[1] The AAO will adjudicate the appeal of the denial of the applicant's Form I-485 in a separate decision.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 applicant 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment should be on employer letterhead stationary, if the employer has such stationary, and must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record reflects than on January 9, 2006, the applicant filed a Form I-687, Application for Status as a Temporary Resident. On May 25, 2005, the applicant appeared for an interview based on his application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

The applicant has provided the following evidence relating to the requisite period:

Employment Letters

- A letter dated February 7, 2002, signed by [redacted] on S & S Construction letterhead stationary. [redacted] states that the applicant worked as a steam cleaner at his construction company from January 1982, to November 1987. He states that the applicant's salary was $40 per day and that the applicant was paid in cash. He states that the applicant was very faithful and sincere; and,

- An affidavit from [redacted], sworn to on July 25, 2006. [redacted] states that the applicant worked at his construction company from January 1981 to November 1987. He states that although he did not have his business license in 1981, the applicant worked for him at his personal construction site and was paid $40 per day. [redacted] states that he started his construction business in 1981 but did not get his license until April 1983. He attaches a copy of his business license.

These letters can be given little evidentiary weight because they lack sufficient detail and information required by the regulations. Specifically, the employer, [redacted], failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the employer also failed to declare which records his information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative, state the reason why such records are unavailable. In addition, the letter from [redacted] listed his position but did not list the applicant's duties. Furthermore, an unexplained material inconsistency exists between the two letters. In one letter, [redacted] attests that the applicant began working for him in January 1982 and in the other letter, he states that the applicant began working for him in January 1981. It is incumbent upon the petitioner 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has not explained this inconsistency and has not submitted competent objective evidence as to when he began working for [redacted]

Letters and Affidavits

- An affidavit sworn to on February 11, 2002, from [redacted]. Mr. [redacted] states that he has known the applicant since 1981, but does not provide the exact date or explain how or under what circumstances they met. He states that he visited the applicant several times at his residence in Brooklyn, New York, and also visited him several times when he resided in New Jersey from February 1988 to October 1990. This letter can be given little evidentiary weight as it is not sufficiently detailed. Mr. [redacted] does not indicate personal knowledge of the

applicant's initial entry to the United States and provides minimal details about the applicant's continuous residence and physical presence in the United States;

- An affidavit sworn to on February 13, 2002, from [redacted] Ms. [redacted] states that she has known the applicant since 1981. She states that she knows that he lived at his address on [redacted] in Brooklyn, New York, since he came into the United States until January 1988 because he was her best friend. She states that they visited each other's residences on numerous occasions. She states that the applicant resided at his address in [redacted], New Jersey, from February 1988 to October 1988 because she had conversations with him many times during his residence there and that she personally visited his home. She states that the applicant is of good moral character and that he is friendly to the community. This letter can be given little evidentiary weight as it is not sufficiently detailed. does not specify when, where, or how she met the applicant. She fails to indicate any personal knowledge of the applicant's claimed entry to the United States or of the circumstances of his residence other than the fact that they visited each other on numerous occasions. Finally, she does not specify how she recalls when she met the applicant or state where or how she met ; and,

- An updated affidavit sworn to on July 25, 2006, from [redacted]. Ms. [redacted] states that on February 13, 2002, she executed an affidavit in support of her acquaintance with the applicant since 1981. She states that at the time, he resided at the house owned by her husband, [redacted]. She lists her current address and telephone number and states that she is available for verification. This affidavit adds little towards establishing the applicant's continuous residence and physical presence. It can therefore be given little weight as evidence of the applicant's required continuous residence and physical presence for the same reasons as her previous statement.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of their presence in the United States during the requisite period. None of the affiants indicated how they recalled when it was that they first met the applicant. Although the applicant has submitted numerous letters and affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period.

The record of proceedings contains various other documents, including a printout from the Internal Revenue Service, indicating the applicant filed tax returns from 1997 to 2000, and a Social Security Statement dated July 19, 2004, indicating earning from 1991 to 2003. None of

this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States on August 29, 1984, and to have resided for the duration of the requisite period in Florida, New Jersey, and New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

The absence of sufficiently detailed and probative documentation to corroborate the applicant's claim of entry and continuous residence for the entire requisite period, detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 on affidavits alone, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982 through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

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