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U.S. Citizenship
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AUG 10 2007

[Redacted]

FILE: [Redacted]
MSC-04-303-10331

Office: CHICAGO

Date:

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 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 Acting District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The acting director determined the applicant failed to establish that he entered the United States before January 1, 1982. As a result, the acting director denied the application.

On appeal, the applicant reiterated that he met his burden of showing his presence in the United States for the requisite period and attached additional evidence in support of his application.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

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 applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant 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 and 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.* 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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on July 29, 2004. 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 showed his addresses during the requisite period to be: [REDACTED] Chicago, Illinois from November 1981 to January 1987; [REDACTED], Chicago, Illinois from February 1987 to May 1987; and [REDACTED] Chicago, Illinois from June 1987 to October 1990. At part #33 where applicants were asked to list employment in the United States since entry, the applicant showed his employment during the requisite period to be: Self-employed at odd jobs in Chicago, Illinois from November 1981 to January 1984; cashier at Bosa Donut in Schaumburg, Illinois from February 1984 to February 1986; and worker at Material Testing Labs Inc. in Bellwood, Illinois from March 1986 to October 1989. The applicant initially provided no documentation with the Form I-687 to support his claim of continuous unlawful residence.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on April 21, 2006, the applicant submitted the affidavit of [REDACTED] dated May 8, 2006. The affiant confirmed that he met the applicant in Chicago in November 1981. He also confirmed that the applicant resided continuously from November 1981 to October 1990 at the following Chicago, Illinois addresses: [REDACTED] and [REDACTED]. The affiant also provided information regarding the applicant's employment in the United States. The applicant also submitted an affidavit from [REDACTED] dated May 8, 2006, in which the affiant stated he entered the United States in September 1982 and he met the applicant in Chicago in November 1982. The affiant confirmed that the applicant resided continuously at [REDACTED], Chicago; and [REDACTED] Chicago between November 1982 and October 1989. The affiant also confirmed the applicant's employment in the United States. Although not required, neither affiant provided

documentation of his identity or presence in the United States during the statutory period. The applicant also submitted a receipt from the Sikh Religious Society (of Chicago) dated December 19, 1981. The receipt lists the applicant's name but does not list his address.

In denying the application the acting director noted that [REDACTED] a provider of an affidavit, was contacted on June 6, 2006. [REDACTED] stated that the applicant had resided or lived in California for about maybe a year or two before moving to Chicago. As a result of the inconsistency between [REDACTED] oral statement and the applicant's claim, the acting director found the applicant had failed to establish the credibility of his application. CIS concluded that the applicant had failed to establish that he entered the United States before January 1, 1982.

On appeal the applicant provided an affidavit from himself and two other individuals in an attempt to explain statements of the affiants that conflicted with their prior affidavits. In the affidavit from [REDACTED] dated June 21, 2006, the affiant referred to the acting director's mention of the affiant's statement "that [the applicant] resided or lived in California for about maybe a year or two before moving to Chicago." In the affidavit, the affiant stated, "On the contrary I said 'I don't think so he lived in California.' In addition, I claimed that in my knowledge that he lived in Chicago since November of 1981." The second affidavit did not provide a clear explanation for the apparent inconsistency between the affiant's prior written and oral statements. Specifically, the affiant appeared to reiterate the inconsistency already noted by the acting director. The affiant also neglected to explain why he would have mentioned California in the context of the applicant, considering that the applicant's statements indicate he never lived in California. This inconsistency is relevant in that it casts some doubt on the question of whether the affiant actually had knowledge of the applicant's place of residence during the statutory period. Although not required, the affiant did not provide documentation of his identity or his continuous residence in the United States during the statutory period. The applicant also failed to submit additional evidence supporting the affiant's statements regarding the applicant's periods of residence in the United States. Considering the limitations of the explanation the affiant provided for the inconsistency found in his prior statements, and considering the lack of additional evidence to solidify the affiant's claim, the explanation is found not to have overcome this inconsistency.

The second affidavit on appeal was provided by [REDACTED]. In this affidavit, the affiant attempted to clarify statements he made during a telephone conversation with an immigration officer. In the affidavit, the affiant stated, "I made a mistake by saying [the applicant] came to the U.S. in the year 1980. At the moment that I received the call from the [immigration officer], I was picking up a new passenger and was asking them about [their] destination." The record indicates an immigration officer contacted the affiant at 3:24 p.m. on May 30, 2006. At this time, the affiant indicated the first time he met the applicant was in 1980 at an Amoco gas station. The statement the affiant made during the telephone conversation conflicts with his initial affidavit and with the applicant's claims regarding his date of entry into the United States. This inconsistency is relevant because it casts some doubt on the affiant's specific knowledge of the applicant's periods of residence in the United States during the statutory period. Although not required, the affiant did not provide documentation of his identity or his continuous residence in the United States during the statutory period. The explanation provided by the affiant for the inconsistency between his written

and oral statements is found to be unreasonable under the circumstances. It is reasonable that the affiant could err regarding the specific date on which he met the applicant more than twenty years ago. However, it is unreasonable that the affiant would be unable to recall the date of his own first entry into the United States. Since the affiant stated in his affidavit that he entered the United States in September 1982, it is unreasonable he would mistakenly state that he met the applicant in the United States in 1980. This inconsistency, without a sufficient explanation, calls into question the affiant's ability to confirm the applicant's residence in the United States during the requisite period.

In summary, the applicant has provided only one piece of contemporaneous evidence of residence in the United States relating to the 1981-88 period, in the form of a receipt. This receipt has limited evidentiary value in that it does not list the applicant's address. The applicant has submitted affidavits that conflict with the affiant's oral statements or do not verify the applicant's residence for the entire requisite period. Specifically, the affidavit from [REDACTED] was found to be inconsistent with [REDACTED]'s oral statements to the immigration officer. The affidavit from [REDACTED] was found to be inconsistent with the oral statements he made to the immigration officer, and his explanation of this inconsistency was found to be insufficient. In addition, the affidavit failed to establish the affiant's knowledge of the applicant's residence during the entire requisite period. The applicant also failed to provide any supporting documentation regarding his employment in the United States during the requisite period, despite having indicated that he was employed continuously from 1981 through 1988.

The absence of sufficiently detailed and consistent supporting 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, and its credibility and amenability to verification. Given the contradictions between statements contained in the supporting affidavits and oral verification of these statements, and given the applicant's reliance upon documents 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.