



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

MSC 05 223 10404

Office: BOSTON

Date: DEC 20 2007

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 District Director, Boston. 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, on May 11, 2005. 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 as 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 for the applicant asserts that the director failed to accord due weight to the affidavits submitted to establish the applicant's continuous residence in the United States since on or before January 1, 1982. Counsel contends that since the director did not give any indication that the application contained inconsistent or false information, the affidavits should have been accorded substantial evidentiary weight, and were sufficient to establish the applicant's burden of proof by the preponderance of the evidence standard.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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.

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 May 11, 2005. 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 address in the United States from March 1978 until March 2000 to be [REDACTED] in Bronx, New York. At part #31 of the applicant's Form I-687 where he was asked to provide the names of all churches of which he is a member, he stated "None." At part #33 of the applicant's form I-687, where he was asked to list all of his employment in the United States since he first entered, he indicated that that he has been self-employed as a vendor since June 1979. The applicant did not provide an address associated with this employment.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may

submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant was interviewed under oath by a CIS officer on October 25, 2005. During his interview, the applicant testified that he entered the United States for the first time in December 1981, when he was 28 years old. The record also contains an un-dated statement from the applicant in which he states that he first entered the United States without inspection on June 2, 1979. Therefore, the applicant himself has claimed to have entered the United States for the first time in either March 1978, June 1979 or December 1981. While all of these dates fall before January 1, 1982, the applicant's submission of such inconsistent claims regarding his residency raises questions regarding the credibility of his application as a whole. 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 petitioner 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 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. *Id.*

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

- An affidavit from [REDACTED], who states that he is the applicant's cousin. [REDACTED] states that he became aware of the applicant's presence in the United States in 1981 because the applicant called him upon his arrival in Buffalo, New York and [REDACTED] picked him up. He further states that the applicant lived with him between 1981 and 1988 at [REDACTED] in Newark, New Jersey, and at [REDACTED] in Brooklyn New York. [REDACTED] stated that the applicant did menial and odd jobs to make his living. He also states that he accompanied the applicant to apply for amnesty in 1987, but the applicant was turned away. Here, the affiant's statements regarding the applicant's residences during the requisite period are inconsistent with the applicant's own statements on the Form I-687 application. The applicant stated that he resided at one location in Bronx, New York from March 1978 until March 2000, while [REDACTED] states that the applicant resided with him in Newark, New Jersey and Brooklyn, New York from 1981 until 1988, during which time he regularly attended churches, funerals and social gatherings with him. [REDACTED] statement that the applicant entered the United States in 1981 is inconsistent with the applicant's earlier statements that he entered the U.S. in March 1978 or June 1979. The affiant's statement also conflicts with the applicant's statement on Form I-687 that he has not belonged to a church in the United States, and conflicts with the applicant's statements that he was self-employed as a vendor since 1979. [REDACTED] states that he accompanied the applicant to apply for amnesty in 1987, while the applicant indicated in his own statement that he attempted

to apply in January 1988. Here, the applicant did not provide a phone number at which he could be reached to verify information in the affidavit. Because the affidavit is inconsistent with the applicant's own testimony, is significantly lacking in detail, and is not amenable to verification, it can be given minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period. Further, because it contains information which is not consistent with the information contained on the applicant's Form I-687 and in the applicant's own sworn testimony, doubt is cast on the testimony contained in it.

- An affidavit from [REDACTED] dated October 24, 2005. In this affidavit, [REDACTED] who currently resides in Massachusetts, states that he has known the applicant since 1981 and that the applicant was his roommate for some time. The affiant does not provide the address at which he and the applicant were roommates, nor identify the dates of their residence together. He does not indicate how he met the applicant, what their relationship was for the duration of the requisite period, or whether there were periods of time during which he did not see the applicant. The affiant fails to provide a phone number at which he can be contacted to verify information contained in the affidavit. Because the affidavit is not amenable to verification and is significantly lacking in detail, it can be given minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

The director denied the application on March 14, 2006. In denying the application, the director stated that, pursuant to the investigation and examination of the application, testimony and evidence, it was determined that the applicant had failed to meet his burden of proof in establishing that he entered and maintained continuous unlawful residency in the United States from before January 1, 1982 until the date on which he attempted to file a completed legalization application between May 5, 1987 and May 4, 1988.

On appeal, counsel for the applicant asserts that, absent a finding that the application contained inconsistent or false information, the director should have accorded substantial evidentiary weight to the two affidavits of residence submitted by the applicant. Counsel contends that since the director did not find information that would cast doubt on the credibility of the submitted affidavits, the applicant has met his burden to establish by a preponderance of the evidence that he was continuously resident in the United States for the duration of the requisite period.

It is noted that when denying an application, the director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing an applicant why the evidence failed to satisfy his or her burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). Here, the reasons given for the denial of the application are conclusory, with few specific references to the evidence and testimony in the record. The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). Therefore, the director's error is found to be harmless. All evidence submitted in support of the application, and the credibility and sufficiency of each piece of evidence, has been discussed herein. Further, contrary to counsel's assertions, the fact that the director failed to include a detailed analysis

of the submitted evidence does not lead to a conclusion that he found the evidence to be credible, relevant and probative. The director had a legitimate basis for the denial of the application.

To summarize the evidence of record, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States at a single address in Bronx, New York from March 1978 until March 2000, and that he was self-employed in the United States as a vendor. He later testified under oath that he entered the United States for the first time in December 2001, and submitted a statement indicating that he entered the United States on June 2, 1979. One of the affiants testifies that the applicant entered the United States in 2001 and resided in Newark, New Jersey and Brooklyn, New York during the time when the applicant claims to have been living in Bronx, New York. The affiant's statement's regarding the applicant's employment in various shops also conflicts with the applicant's own testimony that he was self-employed during the requisite period.

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. 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. at 591-92.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) affiants concerning that period, neither of which is credible or probative, based on the discussion above. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent 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 documents with suspect credibility and 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.