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FILE: [REDACTED] MSC 04 363 10568

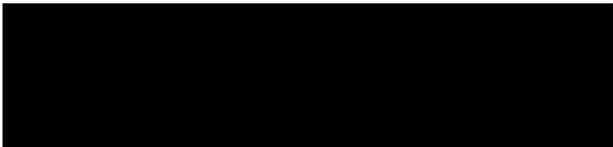
Office: NEW YORK

Date: **JUL 31 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel asserts that the applicant has submitted affidavits from credible witnesses to corroborate his claim of continuous residence in the United States during the requisite period.

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

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 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 CIS on September 27, 2004. At part #16, where applicants are asked when they last entered the United States, the applicant indicated that he last came to the United States on September 9, 1984. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Brooklyn, New York” from September 1984 to October 1986, at [REDACTED], Brooklyn, New York” from October 1986 to July 1987, and at [REDACTED], Brooklyn, New York” from October 1987 to April 1990. He did not list any addresses in the United States prior to September 1984. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that he had no absences outside the United States since initial entry. At part #33 of the Form I-687, where applicants are instructed to list all employment in the United State since initial entry, the applicant stated that he worked as a factory employee for JM Transformer located at “112 Florida Street, Farmingdale, New York” from 1984 to 1985 and that he has been a self-employed part-time van driver in Jamaica, New York since 1985. He did not list any employment in the United States prior to 1984.

At his interview with a CIS officer on January 17, 2006, the applicant stated that he first entered the United States in August 1981. He stated that he subsequently flew to Haiti in June 1984 and remained in his country until September 1984, when he flew back to the United States.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated September 1, 2004, from [REDACTED]. [REDACTED] stated, "I have known [REDACTED] for all my life. I acknowledge that he came to the United States in 1984, and had resided in [REDACTED], Brooklyn, NY 11210." This statement contradicts the applicant's statement during his legalization interview that he first entered the United States in August 1981.

The applicant also submitted an affidavit dated September 17, 2004, from [REDACTED]. Mr. [REDACTED] stated that he had known the applicant for "more than 15 years." [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the exact date he met the applicant.

The applicant included an affidavit dated July 7, 2004, from [REDACTED]. [REDACTED] stated that he had known the applicant "from 1980 in Haiti." [REDACTED] further stated, "[h]e moved to New York and resided at [REDACTED], Brooklyn, New York 11210 where I met him again." [REDACTED] did not provide any information as to when the applicant moved to New York or the frequency of his contact with the applicant.

The applicant provided an affidavit dated September 18, 2004, from [REDACTED]. Mr. [REDACTED] stated that he had known the applicant for "over 28 years." He further stated:

I met with him in the United States when he first arrived in the early 80s. We became reacquainted and have always stayed in touch. During his debut in 1984 we used to live in the same apartment at [REDACTED], Brooklyn, New York 11210.

[REDACTED] statement that the applicant first arrived in the United States "in the early 1980's" is too vague to corroborate the applicant's claim that he first entered the United States in 1981.

The applicant has provided photocopies of his 1984 and 1985 Forms W-2, Wage and Tax Statements, from JM Transformer Co., Inc., along with a photocopy of a 1985 "Request to Employee for Social Security Information" form. He has also submitted a photocopy of a visa page from his Haitian passport bearing a United States nonimmigrant B-1/B-2 visitor's visa issued in Port-Au-Prince, Haiti, on July 9, 1984 and a photocopy of a Form I-94, Arrival/Departure Record, indicating that the applicant was admitted to the United States at New York, New York, on September 9, 1984, as a nonimmigrant B-2 visitor with stay authorized until December 5, 1984.

In a separate proceeding, the applicant's wife, [REDACTED] a United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on December 31, 1986, seeking

to classify him as the spouse of a United States citizen. On the same day, December 31, 1986, the applicant filed a Form I-485, Application for Permanent Residence. In support of the I-485 application, the applicant submitted a Form G-325A Biographic Form dated December 23, 1986. The applicant indicated on the Form G-325A that he lived in Port-Au-Prince, Haiti, from November 1979 to September 1984 and at [REDACTED], Brooklyn, New York" from September 1984 to June 1985. The applicant signed the Form I-485 and the G-325A certifying under penalty of perjury that all the information provided on these forms was true and correct. These statements contradict the applicant's current claim that he first came to the United States in August 1981. The applicant has not provided any explanation for this discrepancy.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant claimed during his legalization interview that he flew to Haiti in June 1984 and remained in his country until September 1984, when he returned to the United States to resume his residence in this country. This statement contradicts the applicant's statement on the Form I-687 that he did not have any absences outside the United States. It also contradicts his statement on the Form G-325A that he lived in Haiti until September 1984, at which time he came to the United States.

On appeal, counsel asserts that the applicant's "credible testimony corroborated by affidavits from credible witnesses " are sufficient to corroborate his claim to continuous residence in the United States during the requisite period. Counsel did not submit any new evidence to corroborate the applicant's claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States prior to September 9, 1984. In fact, one of the applicant's affiants, [REDACTED] specifically stated in his affidavit that the applicant "came to the United States in 1984." The testimony of the other affiants regarding the applicant's date of the initial entry into the United States was vague. None of the affiants stated that the applicant that he had personal knowledge that the applicant first arrived in the United States in August 1981. Indeed, the evidence of record, considered in its totality, supports a conclusion that the applicant first entered the United States on September 9, 1984.

The absence of sufficiently detailed 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, its credibility and amenability to verification. Given the applicant's contradictory statements on his applications and during his legalization interview and his 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.