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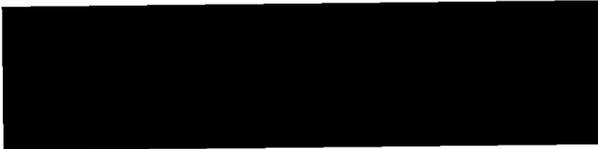
Applicant:



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.

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. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 contends that the district director erred in denying the application based on a discrepancy in the testimony provided in the affidavit by [REDACTED] and a subsequent telephonic interview with Mr. [REDACTED]. Counsel asserts that the district director failed to consider the rest of the evidence submitted and the consistent and persuasive testimony given by the applicant at his legalization interview.

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 December 3, 2004. 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 “Chicago, Illinois” from June 1979 to March 1981; at “Chicago, Illinois” from March 1981 to December 1984; and, at “First Floor, Chicago, Illinois” from January 1985 through February 1990. At block #33, where applicants are instructed to list all employment since their arrival in the United States, the applicant indicated that he worked for “”, located at “”, Chicago, Illinois, as an attendant from April 1982 to July 1988. The applicant did not list any employment in the United States prior to April 1982.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 29, 2002, from [REDACTED] stating that he has known the applicant since 1979 and he and the applicant are friends. Although the affiant's testimony indicated that the applicant had resided in this country since 1979, Mr. [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

The applicant also submitted included an affidavit dated May 30, 2002, from [REDACTED] stating that he has known the applicant since 1981 and that they are friends. While Mr. [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant also provided an affidavit dated May 30, 2002, from [REDACTED] stating that he has known the applicant since 1981 and that they are friends. However, Mr. [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

The applicant included an affidavit dated May 28, 2002, from [REDACTED] stating that he has known the applicant since October 1981, when they met in a restaurant. However, Mr. [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

Additionally, the applicant submitted a letter dated May 5, 2003, from Reverend [REDACTED] [REDACTED], Founder and Pastor of the Indian Mission, [REDACTED] in Oak Park, Illinois, stating that he has known the applicant since 1981 and that the applicant attends services at his church "on special occasions." Mr. [REDACTED] provided the applicant's current address as of the date of his letter, [REDACTED] but he failed to provide the applicant's address(es) during the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive dates of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establishes how the author knows the applicant; and, (G) establishes the origin of the information being attested to. The letter from Pastor [REDACTED] does not conform to this standard. Mr. [REDACTED] does not state the applicant's inclusive dates of membership or the applicant's address(es) during the period of his membership in the church.

The applicant submitted an affidavit dated October 18, 1990, from [REDACTED] then residing at [REDACTED], stating that he has known the applicant since 1986 because

he and the applicant are friends and roommates. Mr. [REDACTED] did not specify the address where he and the applicant were roommates, but the applicant indicated on the Form I-687 that he resided at [REDACTED] the address listed by Mr. [REDACTED] on his 1990 affidavit, from June 1979 to March 1981, not from 1986 to 1990. The applicant indicated on the Form I-687 that he resided at [REDACTED] in 1986. The applicant has not provided any explanation for this discrepancy in his addresses and dates of residence.

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 also submitted an affidavit dated May 11, 2005, from [REDACTED] stating that he has known the applicant since 1980 and that they are friends. However, Ms. [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

On March 14, 2006, a CIS officer conducted a telephonic interview with [REDACTED]. The notes of the officer indicate that Mr. [REDACTED] stated that he had known the applicant for 10 or 15 years, and that he met the applicant at [REDACTED] Restaurant in the 1990's.

The district director denied the application on March 20, 2006, because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982, through the date that he attempted to file a Form I-687 in the original legalization application period between May 5, 1987 to May 4, 1988. The district director specifically noted in the denial decision that the [REDACTED] stated in his affidavit that he had known the applicant since 1981, but he told the officer who conducted a telephonic interview with him on March 14, 2006, that he met the applicant in the 1990's and had known him for only 10 or 15 years.

On appeal, counsel disputes the discrepancy noted by the director. Counsel submits a new affidavit dated May 9, 2005, from [REDACTED]. Mr. [REDACTED] states in this affidavit that he originally attested that he had known the applicant since 1981. Mr. [REDACTED] further states that he told the officer on the telephone that he had known the applicant for twenty or twenty-five years, not ten or fifteen years as stated in the denial decision. Mr. [REDACTED] asserts that he did not state during the telephonic interview that he met the applicant in the 1990's as stated in the denial decision.

In the absence of a transcript of the telephonic interview conducted with Mr. [REDACTED] on March 14, 2006, it is not possible to confirm or deny Mr. Moqet's statement in his affidavit dated May 9, 2005. Regardless of this disputed discrepancy in Mr. [REDACTED] testimony regarding his acquaintance with the applicant, the fact remains that Mr. [REDACTED] has not provided any specific

details or verifiable information such as the applicant's address(es) of record during the period of their acquaintance. He merely states that he met the applicant in 1981 at a restaurant.

Counsel asserts on appeal that the district director failed to take into consideration the other affidavits submitted by the applicant or the applicant's "consistent and persuasive testimony" during his legalization interview. As discussed above, the affidavits submitted by the applicant in support of his claim lack sufficient detail and contain little verifiable information.

The absence of sufficiently detailed supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

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 as required under section 245A(a)(2) of the Act. 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.