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U.S. Citizenship
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Services

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FILE:



MSC 06 080 12138

Office: CHICAGO

Date:

SEP 19 2007

IN RE:

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:

Self-represented

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

The 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 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, the applicant asserts that he has lived in the United States since prior to August 1981 and submits documentation to explain why one of the affiants, who attested to the applicant's residence, was unavailable for further contact by Citizenship and Immigration Services (CIS).

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, which was dated May 11, 1990 and signed by the applicant and the attorney who assisted the applicant in completing the form. The record also shows that the applicant submitted a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 19, 2005. A review of both documents shows a number of significant factual discrepancies. First, No. 33 in the Form I-687 dated May 11, 1990 contains the following list of the applicant's residences: 1) [REDACTED] MS 39773, where the applicant claimed to have resided from August 1981 to April 1986; 2) [REDACTED], Chicago, IL 60626, where the applicant claimed to have resided from May 1986 to December 1989; and 3) [REDACTED] Chicago, IL 60625 where the applicant claimed to have resided from January 1990 through the date the application was filed. No. 30 in the more recent Form I-687, however, indicates that the applicant only resided in Mississippi at the West Point address from August 1981 to April 1984. The same application also indicates that the applicant's residence at [REDACTED], Chicago, Illinois commenced in May 1984, not May 1986 as claimed in the Form I-687 completed in May 1990.

Second, No. 36 in the Form I-687 dated May 11, 1990 provides the following information about the applicant's employers: 1) [REDACTED] where the applicant claimed to have been employed from August 1981 to April 1984; 2) U.S. Peace Builder for which the applicant did not provide the dates of employment; and 3) [REDACTED] where the applicant claimed to

have been employed from January 1990 through the date of the application. However, No. 33 of the more recent Form I-687 indicates that in addition to the applicant's employment at 7-Eleven in 1990, he worked at another 7-Eleven store location from May 1984 to December 1985 and from January to November 1986 at which time the applicant claimed to have been employed at the 7-Eleven as a part-time cashier. Additionally, the applicant indicated that his employment at the [REDACTED] actually commenced in January 1986 and continued through October 1987 before he rejoined the same store location in January 1990. It is unclear why the initial Form I-687 contained a much shorter list of employers. 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). In the present matter, the applicant has provided no additional evidence or information to reconcile the significant inconsistencies between the information provided in the earlier Form I-687 and the information provided in the more recent Form I-687.

Additionally, in an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following documentation:

1. An employment affidavit executed on August 28, 1990 from [REDACTED] [REDACTED]'s employment at the farm from August 1981 through April 1984. [REDACTED] that the applicant was compensated \$150 per week.
2. An employment letter dated February 28, 1990 from [REDACTED] who stated that the applicant was employed at his 7-Eleven [REDACTED] [REDACTED] stated that the applicant's dates of employment were from May 2, 1984 to December 30, 1985 and from January 1, 1986 to November 1986.
3. A notarized employment letter dated April 17, 1990 from [REDACTED] of U.S. Peace Builders. [REDACTED] stated that the applicant worked in his business as a painter from March 1987 to January 1990.
4. An affidavit dated April 8, 2002 from [REDACTED] The affiant stated that he is a U.S. citizen and attested to the applicant's residence in the United States since August 1981.
5. An affidavit dated December 7, 2003 from [REDACTED] The affiant stated that he is a U.S. citizen and attested to the applicant's residence in the United States since August 1981. The affiant further specified that the applicant resided continuously in the United States from April 1984 to December 1985.
6. An affidavit dated December 9, 2003 from [REDACTED] The affiant stated that the applicant has resided in the United States since August 1981. The affiant

specified that the applicant resided continuously in the United States from April 1984 to December 1985.

7. Pay stubs for various pay periods in 1987 showing the applicant's employment for [REDACTED]
8. An envelope with a foreign postage stamp and a date stamp showing that it was sent to the applicant on February 20, 1985 to his address at [REDACTED] Chicago, IL.

On May 11, 2006, the director denied the applicant's Form I-687 application, concluding that the applicant failed to submit sufficient evidence to establish his continuous residence in the United States during the requisite time period. The director stated that attempts were made to contact [REDACTED] [REDACTED]. However, he was unable to do so based on the contact information provided by the applicant. The director further noted that none of the three affidavits was otherwise accompanied by other evidence to support the claims of the various affiants. With regard to the affidavits of [REDACTED] the director stated that the applicant failed to provide other supporting evidence establishing a relationship between the applicant and each of the affiants.

On appeal, the applicant explains that [REDACTED] is now deceased and provides evidence in support of this claim. Although the applicant now provides a contact phone number of [REDACTED] the AAO notes that the applicant had ample opportunity to provide this information earlier. With regard to the applicant's employment with [REDACTED] the AAO will draw no adverse conclusions based on CIS's inability to contact these individuals, as the issue of the applicant's employment is not dispositive of the applicant's claim unless the applicant provides inconsistent evidence or information. However, the employers' statements fall short of the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i), which require that letters from employers specify the aliens address at the time of employment as well as the alien's duties and the origin of the employee's information, i.e., whether the information was obtained from official company records. In the event that employment records are unavailable, 8 C.F.R. § 245a.2(d)(3)(i) requires that the employer submit an affidavit in which the employer attests under the penalty of perjury to an explanation as to why the alien's employment records are unavailable. Neither of the employment letters discussed above provides the applicant's residential address during the time of his employment with each respective company; nor does either employer suggest that the information provided was obtained from employee records. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Aside from the deficient employment letters discussed above, the record lacks the necessary corroborating evidence of the applicant's residence in the United States from prior to January 1, 1982 through 1986.

¹ The AAO notes for the record that the director misspelled the names of [REDACTED]. The AAO has included the correct spelling of each name in the present decision.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-M-*, 20 I&N Dec. 77. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.* In the present matter, the applicant's claimed residence in the United States from prior to January 1, 1982 through 1986 is largely supported by the affidavits of two unavailable employers and three affiants who provide no information other than their claimed knowledge of the applicant's residence in the United States since August 1981. Thus, contrary to the applicant's apparent misconception, the unavailability of two of his claimed employers is not necessarily germane to the issue of the applicant's residence. However, the probative value of the remaining evidence is critical. Here, [REDACTED] [REDACTED] have provided severely deficient affidavits, which are so lacking in information that they cannot be verified for their consistency with other evidence on record. *Id.* None of the affiants mentions how they became acquainted with the applicant, how they know of his residence in the United States, or any of the residences the applicant claims to have occupied from August 1981 through 1986. Thus, while the applicant has submitted sufficient documentation to verify his employment for [REDACTED] in 1987, the remainder of [REDACTED] claim attesting to the applicant's residence in the United States since August 1981 cannot be verified. The AAO further acknowledges the applicant's submission of an envelope, which originated in Pakistan and is addressed to the applicant at one of the residences identified in both of his Form I-687s. However, as previously discussed, the two Form I-687s are inconsistent with regard to the time period during which the applicant resided at the address on the envelope. In light of this inconsistency and the applicant's failure to resolve it, the AAO is reluctant to rely on the envelope as sufficient proof of the applicant's claimed residence in the United States for the entire time period claimed.

Moreover, even if the AAO deemed the envelope as conclusive proof that the applicant resided at [REDACTED] [REDACTED] in February 1985, the record is still lacking in sufficient evidence establishing the applicant's continuous residence in the United States from August 1981 through 1984 and from March 1985 through 1986.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-86 period, and has submitted deficient affidavits to account for significant portions of the relevant time period. 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 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 1986 as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*. 20 I&N Dec. 77. 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.