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FILE: [REDACTED]
MSC-05-252-13748

Office: CLEVELAND, OHIO

Date: **SEP 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: 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, Cleveland, Ohio, and that decision 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. Specifically, the director noted in his decision that at the time of the applicant's interview with a CIS officer, the applicant stated that he first entered the United States in 1986. He went on to say that other evidence submitted by the applicant did not prove, by a preponderance of the evidence, that the applicant resided continuously in the United States for the duration of the requisite period. 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that he previously forgot to submit a document that established that he was in the United States before January 1, 1982. The applicant also submits an affidavit with his appeal.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 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. 8 C.F.R. § 245a.2(d)(5).

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 June 9, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all of his residences in the United States since first entry, he showed his first and only address in the United States during the requisite period to be in Brooklyn, New York, from April 1986 until November of 1990. At part #31 where the applicant was asked to list all organizations and churches that he has ever been a member of in the United States, the applicant indicated that he was not a member of any churches or organizations. At part #32 where the applicant was asked to list all of his absences since January 1, 1982, the applicant did not indicate that he was absent at any time during the requisite period. At part #33 where the applicant was asked to list all of his employment in the United States since January 1, 1982, he did not show that he was employed during the requisite period. However, he showed his first employment in the United States to be self-employment in Brooklyn, New York from December of 1988 until November of 1990.

The record indicates that during the applicant's interview with a CIS officer, the applicant stated that he first entered the United States in New York's JFK airport in 1986.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided four (4) letters and affidavits as follows:

- A letter from the Harlem Hospital Center indicating that the applicant requires physical therapy. This letter is signed by [REDACTED] and indicates that the applicant was brought to this doctor for tooth pain. The letter fails to indicate what type of medicine [REDACTED] practices. The letter shows a date of November 1986, but does not indicate what this date pertains to. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of "medical records showing treatment of hospitalization of the applicant." The regulation further provides that these records "must show the name of the medical facility or physician and the date(s) of the treatment." This letter fails to provide medical records showing the medical treatment of the applicant. The letter, dated December 15, 2005 also fails to indicate the source of information Dr. [REDACTED] referred to in order to obtain the applicant's start date as his patient and did not clearly indicate the dates or times of treatment.
- A letter from Calvary United Church of Jesus Christ Apostolic, Inc. dated December 28, 2005 and signed by [REDACTED]. This notarized letter states that [REDACTED] has known the applicant, whom he refers to as both a female and a male in various parts of the letter, since July of 1986. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. Here, though the letter is on letterhead from the church and identifies the applicant's name, this letter does not indicate what position [REDACTED] holds in the church. This letter further fails to provide dates of the applicant's membership, does not include the seal of the

organization, and fails to establish the origin of the information being attested to. As such, this letter is found significantly lacking in detail to be considered credible proof of the applicant's residence. It is also noted here that the applicant did not indicate that he was a member of a church on his Form I-687.

- An affidavit from [REDACTED] who states that he has personal knowledge that the applicant lived in Brooklyn, New York from 1986 to 1995. The affiant claims he met the applicant during a bus ride to North Carolina. Although not required, the affiant failed to provide documentation of his identity or his residence in the United States during the statutory period. In addition, the affiant does not claim to know and is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, since the affiant confirmed he did not know the applicant until 1986. Because this affidavit is significantly lacking in detail and does not pertain to the duration of the requisite period, it carries very little weight in establishing that the applicant maintained continuous residence for the duration of the requisite period.
- An affidavit from [REDACTED] who states he met the applicant when he was selling CD's and movies on Cleveland Avenue. It is noted that the applicant indicated on his Form I-687 that he was not employed in the United States until 1988. The affiant states that he knows that the applicant lived in Brooklyn, New York from April 1986 until November of 1990. Although not required, the affiant failed to provide documentation of his identity or his residence in the United States during the statutory period. In addition, the affiant does not claim to know and is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, since the affiant confirmed he did not know the applicant until 1986. Because this affidavit is significantly lacking in detail and does not pertain to the duration of the requisite period, it carries very little weight in establishing that the applicant maintained continuous residence for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since April of 1986. The evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant resided in Brooklyn, New York since 1986.

In denying the application the director noted the above, and stated that at the time of the applicant's interview he testified that he first entered the United States in 1986.

On appeal the applicant attempts to explain these contradictions. He furnishes a new affidavit from Stephanie Edward who is consistently referred to as a male in the affidavit. This affidavit states that the applicant resided at [REDACTED] from 1980 to 1985 and then moved to [REDACTED] where he then lived from 1986 to 1995. The affiant indicates he or she met the applicant at a wedding. Although not required, this affiant failed to provide documentation of his or her identity or his or her residence in the United States during the statutory period. It is noted that the applicant indicated on his Form I-687 that he left New York and moved to Ohio in November of 1990. Therefore, information in this affidavit is not consistent with other evidence in the record. That this affidavit claims that the applicant was in the United States since 1980 when all previous evidence

submitted states that he entered in 1986 and that affiant listed the applicant's residences in the United States in a manner that was not consistent with other evidence in the record casts doubt on the credibility of this affidavit.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In summary, the 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 one person that was relevant to the duration of the requisite period. This affidavit contained information regarding the applicant's addresses of residence in the United States that was inconsistent with other evidence in the record. The applicant further submitted affidavits from individuals that pertained to only part of the requisite period and a letter from a church, when he previously indicated that he was not a member of any churches on his Form I-687.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the evidence produced by the applicant is neither probative nor credible.

The absence of sufficiently detailed 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 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.