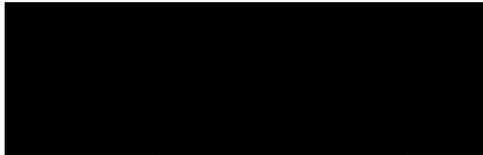


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FILE: [REDACTED] Office: NEW YORK Date: **DEC 19 2008**
MSC-05-244-16049

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grissom, Acting 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 Director, New York. 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. The director denied the application, finding 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.

On appeal, counsel for the applicant asserts that the director failed to accord due weight to the evidence he submitted in support of the application. He states that the applicant has established his unlawful residence for the requisite time 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 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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters; and one receipt. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains five affidavits from [REDACTED], two of which were signed in 1991, two of which were signed in 1992 and the other of which was submitted in 2006. [REDACTED] 2006 affidavit states that the affiant first met the applicant in Nigeria in 1979 and that the

applicant resided with him in the United States from 1981 until 1991. However, one affidavit submitted in 1991 and another submitted in 1992 state that the affiant became friends with the applicant in 1981, when the applicant began to reside in the United States. In all of his affidavits, the affiant fails to state the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time during the requisite period when he did not see the applicant. When all of his affidavits are considered both separately and together, they can be accorded minimal probative value because they are significantly lacking in detail.

Affiants [REDACTED] and [REDACTED] state that they first met the applicant in Houston, Texas in June 1984 and on October 12, 1981 respectively. However, these affiants do not state that they know if the applicant ever resided in the United States during the requisite period. Therefore, their affidavits carry no weight as evidence that the applicant did so.

Affiants [REDACTED] and [REDACTED] state that the applicant is [REDACTED] wife's cousin and [REDACTED] co-worker respectively. Though these affiants provide the applicant's address of residence during the requisite period, they fail to state when and where they first met the applicant and whether they first met him in the United States. They further fail to state the frequency with which they saw the applicant in the United States during the requisite period.

Affiant [REDACTED] submits three affidavits, two dated in February and one in June of 1992. In the first of his February affidavits, the affiant states that he used to be co-tenants with the applicant and provides an address of residence during the requisite period for the applicant. However, he fails to state when or where he first met the applicant or whether he met him in the United States. He does not provide an address associated with his co-habitation with the applicant or state when they resided together. He further fails to state the frequency with which he saw the applicant during the requisite period.

In the second affidavit submitted by [REDACTED] that is dated in February of 1992, he states that he and the applicant drove together into Canada in July of 1987 though the Canadian border and then returned approximately 10 days later. The affiant states that both he and the applicant submitted birth certificates to immigration officials and that he submitted his driver's license when both leaving and re-entering the United States. In his June 1992 affidavit, Eric [REDACTED] reiterates the testimony regarding his trip to Canada with the applicant and adds that he also submitting his driver's license and his birth certificate, though because these were both issued subsequent to July of 1987, it appears that these are not the documents the affiant is referring to. Because neither of these additional affidavits refers to the applicant's residence in the United States during the requisite period, they carry no weight as evidence that he resided in the United States during that time.

Affiant [REDACTED] submits two affidavits.¹ In his first affidavit, the affiant states that the applicant used his birth certificate to pick up his wife from Canada. In his second affidavit, the affiant states that the applicant was his sister's boyfriend and provides an address of residence during the requisite period for the applicant. However, in both affidavits, the affiant fails to state when or where he first met the applicant or whether he met him in the United States. He does not provide an address associated with his co-habitation with the applicant or state when they resided together. He further fails to state the frequency with which he saw the applicant during the requisite period.

Because these witness attestations are significantly lacking in detail with regards to the affiants' knowledge of the applicant's residence in the United States during the requisite period as noted above, they are of minimal probative value.

The record of proceeding contains a letter from the United Methodist Center in Far Rockaway, New York.² This letter asserts that the applicant has been a member of the congregation since 1981. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This letter does not state the applicant's inclusive dates of membership, nor does it indicate his address of residence during his membership period. Its author also does not indicate how he was able to determine the applicant's start date as a member. Further, the applicant's current Form I-687 does not indicate that the applicant has ever been a member of any churches or associations, casting doubt on the assertions made in this letter. Because this letter is lacking with regards to the regulatory requirements noted above, it can be accorded only very minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains one photocopy of a receipt that is dated during the requisite period. This receipt indicates that the applicant purchased goods from [REDACTED] in New York on April 14, 1987. Though this receipt indicates that the applicant purchased goods in New York in 1987, it does not carry any weight in establishing that the applicant was present in the United States before that time.

The record contains an employment declaration³ that was submitted by the applicant's alleged former employer, General Human Services, and is signed by [REDACTED] who states that he is

¹ Both affidavits are dated May 16, 1992.

² This letter is dated May 3, 1992.

³ This declaration is dated March 28, 1986.

the building superintendent. This declaration was submitted with three pay stubs, purportedly issued to the applicant by this employer.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The employment declaration is of little value because it is inconsistent with other documents in the record. This letter states that the applicant was employed by General Human Services as a janitor from December 1981 until March of 1986. Though this is consistent with a Form I-687 in the record that the applicant signed in 1992, it is not consistent with the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, where he did not indicate that he had been employed in the United States.

The remaining evidence in the record is comprised of the applicant's statements and his two Form I-687 application forms, one of which was signed in 1992 and the other of which is his current Form I-687, which was submitted to USCIS in June of 2005. However, these Forms I-687 are not consistent regarding either the applicant's employment in the United States during the requisite period or regarding his memberships in churches and organizations. The applicant stated that he was employed both as a Janitor for General Human Service from 1981 to 1986 and then and that he then worked as a self-employed technician from 1986 onward in his 1992 Form I-687. However, in his current Form I-687, the applicant did not indicate that he had ever worked in the United States. Similarly, though the applicant stated in his 1992 Form I-687 that he was a member of both the United Methodist Church in Rockaway and of the Celestial Church of Christ in Brooklyn From October 1981 until the end of the requisite period, his current Form I-687 does not indicate that he has ever been a member of any churches. This inconsistency casts doubt on evidence pertaining to the applicant's alleged employment and membership in the United Methodist Church as noted above. 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. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.