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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-284-12264

Office: PHILADELPHIA

Date: **DEC 22 2008**

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-REPRESENTED¹

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

¹ Though the director refers to [REDACTED] as the applicant's attorney of record in his decision, the record does not contain a properly executed Form G-28 that indicates that [REDACTED] is the applicant's attorney of record. Further, [REDACTED] was expelled from the bar in 2007. Because [REDACTED] is not an authorized representative, the applicant is considered self-represented in this matter.

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, Philadelphia. 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, the applicant asserts that he has established his unlawful residence for the requisite time period and he resubmits a previously submitted attestation.

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 establish 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 affidavits and declarations from family and friends and an employment affidavit. 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 an affidavit from _____ dated January 30, 2006 and an unsigned declaration from him that is dated December 27, 2005. In his January 2006 affidavit, the affiant states that the applicant is a good friend of his and that he has known him for approximately 23 years. However, in his December 27, 2005 declaration, he states that he has known the applicant

for 25 years. In both attestations, [REDACTED] fails to state when or where he first met the applicant or whether he first met him in the United States. He further fails to state whether he knows if the applicant resided in the United States for part or all of the requisite period. Because it is unsigned, the declaration from December of 2005 can be accorded no probative value. Because it does not state that the applicant ever resided in the United States during the requisite period, the signed January 2006 affidavit carries no weight as evidence of the applicant's residence in the United States during that time.

Affiant [REDACTED] states that the applicant has been his friend since 1982 and states that he and the applicant visited each other and that they worked together on construction jobs. However, the affiant fails to state when and where he met the applicant or to state whether he knows if the applicant resided continuously in the United States for part or all of the requisite period. Therefore, this affidavit carries no weight as evidence that he did so.

Affiant [REDACTED] states that the applicant resided with him on 43rd Street from August 18, 1981 until December of 1992, sharing bills and rent expenses. However, the affiant does not state when or where he first met the applicant or how they began to reside together. This is significant because the applicant, who was born in 1971, would have been 10 years old when the affiant states that he and the applicant first began to reside together. The affiant further fails to state the frequency with which he saw the applicant during the requisite period or whether there were periods of time during that period when he did not see the applicant. Because it is lacking in detail, this affidavit can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Affiant [REDACTED] and affiant [REDACTED] state that they have known the applicant since 1982 and 1983 respectively and assert that the applicant first entered the United States prior to January 1, 1982 and then resided continuously in the United States until the dates of their affidavits. However, because the affiants did not meet the applicant until 1982 and 1983 respectively, they could not have personal knowledge of the applicant's residence before that date. Further, the affiants do not state when or where they first met the applicant or whether they first met him in the United States, nor do they indicate the frequency with which they saw the applicant during the requisite period. Therefore, these affidavits are of limited probative value.

Affiant [REDACTED] states that the applicant is his relative and that the applicant first entered the United States before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period. However, this affiant does not state when he first saw the applicant in the United States, nor does he state the frequency with which he saw the applicant in the United States during the requisite period. Therefore, this affidavit can only be accorded very limited weight as evidence of the applicant's residence in the United States during the requisite period.

² This affidavit is dated February 5, 1992.

³ This affidavit was notarized on March 8, 1994.

⁴ This affidavit was notarized on March 21, 1989.

The employment affidavit⁵ that was submitted by the applicant's alleged former employer, G. M. Construction, is also of little value. This affidavit is dated November 27, 1992, yet it indicates it was notarized on December 10, 1990. Further, though the document is dated in November of 1992, it attests to the applicant's employment until December of that year. The notary who attested to the veracity of this document's stamp indicates that his commission expired on September 30, 1992, which is also before the date of the letter and before the claimed end date of the applicant's employment. It is also noted that as the applicant was born in 1971, he would have been 10 years old on the date this letter states he began working for this construction company. Additionally, this letter does not adhere to the regulatory requirements for employment declarations.

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.

In this case, the employment letter does not indicate the applicant's duties with the company or state whether the information regarding the dates of his employment was taken from official records. This, combined with the fact that the document was notarized on a date that is prior to both the date the letter indicates it was written and the claimed end date of the applicant's employment, calls into question the credibility of this document. 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).

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in August 1981, and the applicant's passport. Though the applicant submitted a second copy of a notarized affidavit from [REDACTED] with his appeal, it is a duplicate of a previously submitted document and he did not submit any

⁵ This affidavit is dated November 27, 1992, but indicates that it was notarized on December 10, 1990.

additional new evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981 with his appeal. The passport is evidence of the applicant's identity, but it does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

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.