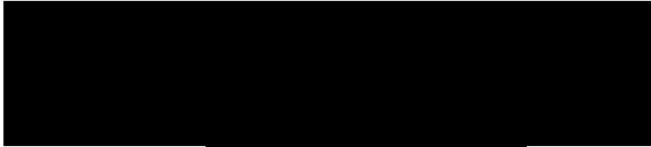


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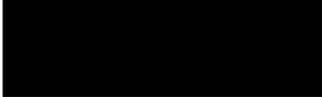
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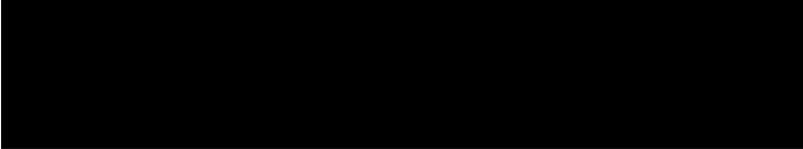
IN RE:

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:



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, 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 determined 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. In part, the director noted certain discrepancies between the applicant's testimony with a Citizenship and Immigration Services (CIS) officer when compared to his statements on Form I-687 and other evidence in the record. The director also found that the two affidavits submitted by the applicant lacked credibility and probative value. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the district director failed to consider the totality of the evidence submitted in determining the applicant's credibility and eligibility for the benefit sought. Counsel contends that the director disregarding stipulations of the CSS/Newman Settlement Agreements, noting that the passage of time must be taken into account and that it may be impossible for an applicant to provide ample documentary evidence or to recall all of the details of living in the United States over two to three decades. Finally, counsel asserts that the director was "utterly presumptuous and prejudiced," by making a negative credibility finding simply because the applicant wished to have an interpreter available at his interview. Counsel submits a brief written statement, but no additional evidence, in support of the 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 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)(1).

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)(1) 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 period, 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).

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.* at 80. 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, 431 (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 continuously resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on July 7, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant stated that he lived at [REDACTED] in Brooklyn, New York from November 1974 until May 1987, and at [REDACTED], also in Brooklyn, from August 1987 until May 1992. The applicant indicated at part #33 that he was self-employed, performing odd jobs, from November 1974 to June 1996. The applicant indicated one absence from the United States during the requisite period at part #32, where he stated that he traveled to Canada from June 1987 until July 1987. The applicant's residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided 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. The applicant did not provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted two affidavits, including an affidavit from [REDACTED], a resident of Brooklyn, New York, who stated that he has known the applicant in the United States since October 1981. He stated that he and the applicant have been good friends since that date and the applicant is a person of good character. Although not required to do so, [REDACTED] submitted a copy of the biographical page of his U.S. passport as proof of his identity. Here, the affiant did not indicate where, when or under what circumstances he met the applicant or how frequently he saw him during the requisite period. He provided no details or verifiable information that would tend to support that he has direct, personal knowledge of the events and circumstances of the applicant's residence. Because of the significant lack of detail, this affidavit can be given only minimal weight as corroborating evidence.

The applicant also submitted a notarized letter from [REDACTED], who stated that the applicant rented a room "in his building" from mid-June of 1982 to May 11, 1989, and that the applicant paid monthly rent of \$140 at the time he moved. He further stated that he owns the building at [REDACTED] in Brooklyn, New York. It is noted that the applicant did not indicate on his Form I-687 that he ever lived at [REDACTED]. Rather, he indicated that he resided at [REDACTED] in Brooklyn from November 1974 until May 1987. Thus, neither the dates nor the address of residence provided by [REDACTED] were consistent with the applicant's own statement. The director later addressed this discrepancy in a Notice of Intent to Deny issued on March 24, 2006. In response, counsel for the applicant stated that the director was "presumptuous in concluding that the 'building' the affiant was referring to in his statement was in fact the building that he currently owns." However, the applicant has not clarified to which "building" [REDACTED] was referring if it was not the one located at [REDACTED]. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, notwithstanding the apparent discrepancy in the address, it is noted that [REDACTED] did not indicate the source of the information to which he was attesting. He provided exact dates of residence for the applicant, thus suggesting that he had some written record of the information to which he was attesting, but he did not submit any documentary evidence, such as a lease agreement or rent receipts to corroborate the dates and rental amounts provided. Based on these deficiencies, [REDACTED]'s letter is severely lacking in probative value.

Finally, the applicant submitted a photocopy of a Form I-95A, Crewman's Landing bearing a date stamp of October 31, 1974. This evidence shows that the applicant made an entry to the United States in 1974 as he claims, but does not establish that he continuously resided in the United States for the duration of the requisite period.

On March 2, 2006, the applicant was interviewed by a CIS officer. The officer's notes from the interview show that the applicant testified that he entered the United States in 1974, that he lived at [REDACTED] until 1989, at [REDACTED] and at [REDACTED] for a year and a half. When asked to clarify discrepancies between this testimony and what was indicated on his Form I-687, the applicant stated that he could not recall dates very well. The applicant also stated that his first departure from the United States was in 1989. The applicant stated that he was not employed at any occupation from 1982 to 1988.

The director issued a NOID to the applicant on March 24, 2006, in which she addressed discrepancies between the applicant's oral testimony and statements made on his Form I-687. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.

In response, counsel for the applicant submitted a letter dated April 21, 2006. With respect to the applicant's testimony regarding his trips outside the United States, counsel stated that the applicant did not recall stating that he traveled in 1989. In response to the director's observation that the applicant could not recall dates during which he lived at various addresses, counsel asserted that it is reasonable and understandable that the applicant is unable to remember precise time periods for addresses at which he resided more than 25 years ago. With respect to the apparent discrepancy regarding the applicant's employment during the requisite period, counsel asserted that the applicant "simply stated that he was not employed at any 'specific' occupation from 1982 to 1988." As noted above, counsel also addressed the discrepancy between the applicant's testimony and the information contained in [REDACTED] letter.

Counsel referred to all of these issues as immaterial discrepancies and stated that the applicant did provide credible evidence to establish his eligibility, including the above-referenced Form I-95A, "which clearly demonstrated his initial entry was prior to January 1, 1982." The applicant did not submit any additional evidence in response to the NOID.

The director denied the application on August 16, 2006. In denying the application, the director again noted the discrepancies outlined in the NOID, and found counsel's statement insufficient to overcome them. The director also found that the affidavit from [REDACTED] affidavit was not credible due to the unresolved inconsistency with the information provided by the applicant on his Form I-687. The director also found the affidavit from [REDACTED] to have minimal probative value. Thus, the director concluded that the evidence in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

In denying the application, the director also noted that the applicant's interview was conducted with the assistance of an Urdu interpreter, and concluded that "it is not credible that you claim to have lived in the United States for over 25 years, yet you needed an Urdu interpreter." The director's comments are inappropriate and are therefore withdrawn. There is no requirement that the applicant's interview be

conducted in English, and the fact that he chose to have an interpreter present is irrelevant and should have no bearing on his eligibility or his credibility. Nevertheless, the district director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.12(f).

On appeal, counsel for the applicant asserts that the district director failed to consider the totality of the evidence submitted in determining the applicant's credibility and eligibility for the benefit sought. Counsel emphasizes that "the Settlement Agreement stipulated jointly with the Government that in view of the lengthy periods of time between the initial application and this application, it would be impossible for all applicants to provide ample documentary evidence; nor would they be able to recall all the details living in the United States for more than 2 decades."

Upon review, counsel's assertions are not persuasive. The applicant has not established by a preponderance of the evidence that he continually resided in the United States for the duration of the requisite period.

While the AAO acknowledges counsel's assertion that the applicant cannot be expected to have perfect recall of his exact dates of residence, the lack of correspondence between the information provided on the Form I-687 and the applicant's testimony during his interview was significant. The applicant signed the Form I-687 under penalty of perjury on June 22, 2005 and provided specific addresses and dates for each residence dating back to 1974. This was 31 years after the date he states he first entered the United States. If he was uncertain or could not recall the information at that time, this was not reflected on his application. Therefore, the fact that he was unable to recall any of this information and provided different dates and addresses during his interview in March 2006, nine months after he filed his application, is significant, and does raise valid questions regarding the credibility of his testimony.

Moreover, the regulations allow the applicant to submit a broad range of documents to satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted an affidavit from [REDACTED] which is so lacking in detail, it can be given only very limited evidentiary weight. As discussed above, the discrepancies between [REDACTED] letter and the applicant's own statements have not been adequately resolved, and his testimony is therefore lacking in credibility. This applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. While an applicant's failure to provide documentary evidence apart from affidavits cannot be the sole reason for the denial of an application, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are lacking in credibility. Again, the affidavits submitted did not contain substantive information or relevant testimony pertaining to the applicant's claim of continuous residence during the requisite period. Thus, the applicant has not demonstrated with relevant, credible and probative evidence that his claim is probably true pursuant to *Matter of E-M-*, *supra*.

In conclusion, the existence of conflicting testimony relating to critical elements of the applicant's residence and the lack of sufficiently detailed evidence that provides relevant and material testimony to

corroborate his claim of continuous residence for the requisite period seriously detracts from the credibility of his 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 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 for the requisite period 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.