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FILE: MSC-05-232-10253

Office: NEW YORK

Date: **JAN 09 2008**

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. Wiemahn, 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, on May 20, 2005. 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. 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 asserts the applicant's claim of eligibility to adjust to temporary resident status.

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. See CSS Settlement Agreement, paragraph 11 at page 6 and 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.* 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.

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 credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver’s license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. 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 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 submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit sufficient evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on May 20, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED] Flushing, New York, as his address from April of 1981 to April of 1996. Similarly, at part #33, the applicant indicated that he was employed in construction by Team Work Construction, located in Flushing, New York, from April of 1990 to August of 1992, and that he was employed in construction by [REDACTED] at [REDACTED] New York, New York, from August of 1992 to the present. The applicant failed to list any employment prior to 1990.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter from [REDACTED], dated December 3, 2005, in which he stated that he has known the applicant since 1989, shortly after his own arrival in the United States. [REDACTED] also stated that since that time they have been neighbors in the Flushing, New York, area, and that the applicant has resided in the area for at least a decade. Here, there is no evidence to demonstrate that [REDACTED] knew the applicant prior to January 1, 1982, or during the requisite period. He admits in his statement that he himself was not present in the United States until 1989. He has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The letter lacks detail that would lend credibility to the claimed relationship with the applicant. Because this letter is lacking in detail and probative value, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.
- An undated letter from [REDACTED] at [REDACTED] New York, New York, in which he stated that he is a contractor in the construction industry and knows the applicant through one of his colleagues in the industry. [REDACTED] further stated that he is aware of the applicant's expertise in the field and would like to employ the applicant as soon as his work permit has been approved, and he can be employed legally. This letter does not clearly confirm the applicant's residence in the United States during the requisite period because it is undated. In addition, this letter does not confirm the applicant's employment; it only indicates a desire to employ him once he has been able to obtain a valid work permit. Lastly, the letter does not conform to the regulatory standards for attestations by employers. Specifically, it fails to specify the exact period of employment, layoff periods, the applicant's duties with the company, whether the information was taken from official company records, and the availability of the company records for review. 8 C.F.R. § 245a.2(d)(3)(i). Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] dated December 1, 2005, in which he stated that he has known the applicant for nearly 15 years, and that they are friends and colleagues from a previous sidewalk project. [REDACTED] also stated that he and the applicant kept in touch with each other. Here, there is no evidence to demonstrate that [REDACTED] knew the applicant prior to January 1, 1982, or during the requisite period. There is no evidence that [REDACTED] himself was present in the United States during the requisite period. He has failed to specify the frequency in which he saw the applicant. He has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States

since prior to January 1, 1982. The letter lacks detail that would lend credibility to the claimed relationship with the applicant. Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] dated February 28, 2006, in which he stated that he met the applicant in September of 1981 in the Chinatown area of New York City, where the applicant was a street vendor selling produce. [REDACTED] further stated that in a short period of time they came to know each other, and that the applicant informed him that he had been a masonry worker back in Malaysia. He refers to his letter of reference submitted in December of 2005 and states that that is how he truly came to know the applicant. Here, [REDACTED] has failed to indicate the frequency in which he saw the applicant during the requisite period. He has failed to show that he himself was present in the United States during the requisite period. Though not required to do so, he has not included proof of his identity with this letter. [REDACTED] has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The letter lacks detail that would lend credibility to the claimed relationship with the applicant. Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] dated April 7, 2006, in which he stated that he was writing in response to the director's doubt concerning his first letter. [REDACTED] further stated that he met the applicant in 1981. Here, [REDACTED] has failed to indicate the frequency in which he saw the applicant during the requisite period. He has failed to show that he himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Though not required to do so, he has not included proof of his identity with this letter. The letter invariably lacks detail that would lend credibility to the claimed relationship with the applicant. Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted as evidence copies of his marriage certificate issued by the City of New York on November 16, 1993, his New York State License/Identification Card issued to him on November 3, 1988, copies of his children's New York State Birth Certificates dated February of 2003 and November of 2004. The applicant submitted a copy of a handwritten residential lease agreement dated April 23, 1981 through April 30, 1983. The applicant also submitted a letter written by [REDACTED] and dated December 2, 2005, in which he stated that he has known the applicant for over 10 years, and that the applicant is a friend and mentor to him. Although [REDACTED] indicates that he has known the applicant for

more than 10 years, he failed to indicate that he knew the applicant during the requisite period, therefore the statement cannot be accorded any weight in establishing that the applicant's claim of residency.

In denying the application the director determined that the applicant had not met his burden of proof, in that he failed to submit sufficient evidence to demonstrate his residence in the United States throughout the statutory period. The director stated that the applicant had failed to provide evidence of his entry into the United States prior to January 1, 1982. The director further stated that the applicant submitted affidavits that were not credible. The director also stated that [REDACTED] was called by an immigration officer on March 15, 2006, at which time he stated that the applicant worked for him since 1992, and that they met 6 or 8 years ago. The director determined that counsel's claim, that [REDACTED]'s statement was misconstrued, was not credible. The director also determined that the claimed 1981 to 1983 residential lease agreement was not valid in that it had been written on paper which cites an EPA and HUD lead paint regulation that did not come into existence until September 6, 1996.

On appeal, counsel states that the applicant testified that he entered the United States on April 22, 1981, and that he is no longer in possession of the passport that he traveled with. Counsel further states that the statements submitted from [REDACTED] and [REDACTED] are credible and support the applicant's claim of continuous residence in the United States during the requisite period. Counsel also states that [REDACTED] resubmitted a letter confirming his acquaintance with the applicant and indicates that his previous responses were misconstrued. Counsel states that the applicant submitted copies of his marriage certificate and children's birth certificates to support his continuous stay in the United States. Counsel concludes by stating that the applicant is an undocumented alien in the country and therefore is unable to have every relevant document to support his claim, but that what he has submitted is sufficient. The applicant resubmits copies of [REDACTED]'s original letter and his letter dated April 7, 2006, and [REDACTED]'s letters, and his child's birth certificate.

The applicant has not submitted any evidence on appeal sufficient to overcome the director's denial. Although counsel makes statements with reference to the issues addressed by the director, there has been no independent corroborating documentation presented to support the claims. Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is further noted that the applicant has failed to submit copies of utility bills, rent receipts, or an affidavit from his landlord confirming his residency from 1981 to 1983 at [REDACTED] Flushing, New York. Although it is stated that [REDACTED]'s statements were misconstrued, there has been no objective evidence submitted to substantiate his claim. Here, the applicant submitted letters that were not notarized, not accompanied by evidence of the writer's status in the United States, and not accompanied by evidence of the writer's presence in the United States prior to January 1, 1982. The applicant has failed to meet his burden of proof, and has failed to overcome the grounds for the director's denial, in that he has not provided tangible evidence or credible documentation to attest to his claimed presence in the United States during the statutory time frame.

The absence of sufficiently detailed documentation to corroborate and support 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 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. •