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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK
MSC 06 060 12680

Date: JUN 05 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-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status.

On appeal, the applicant reiterated his claim of eligibility and implied that the evidence submitted is sufficient to show eligibility.

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 was filed. Section 245A(a)(2) of the Immigration & Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2).

For purposes of establishing residence 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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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. 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.

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet with Citizenship and Immigration Services (CIS) on November 29, 2005. The record contains:

- notes from the applicant’s June 1, 2006 interview;
- an affidavit dated January 23, 2006 from [REDACTED]
- a letter from the applicant dated August 19, 2006; and
- five undated declarations.¹

¹ Those declarations were provided by [REDACTED], [REDACTED], and [REDACTED]. The declarations of [REDACTED] and [REDACTED] were stamped with a notary’s seal. The notary did not date those documents, did not attest to the signatures, and did not indicate that he placed the declarants under oath. The significance, if any, of placing a notary’s seal on a document without attesting to the signature or indicating that the statement was sworn is unknown to this office. Further, the body of each declaration begins, “Being duly sworn” Those declarations contain no other indication, however, that they were sworn

The record contains no other evidence pertinent to the applicant's continuous residence in the United States during the salient period.

The notes from the applicant's June 1, 2006 interview show that he stated that he first entered the United States during 1980 at JFK airport using a bogus passport.

In his August 19, 2006 letter the applicant declared, "As I stated in my interview I entered the country illegally in April 1981."

One of the undated declarations submitted is from [redacted] of Brooklyn, New York. A preprinted portion of that declaration states,

(s)he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s):

To which the declarant appended,

This is to confirm that I have known [the applicant] for several years he was one of my tenants I kown [sic] him before then for approximately ten years 1979 to the present time 2006. [H]e had a excellent Credit he was always on time for his rent, he is a Very Caring, loving person our relationship is Very strong he is great menember of my church.

[Errors in the original.]

This office notes that [redacted]'s declaration is internally inconsistent. The period from 1979 to 2006 is not approximately ten years, but 27 years . Further, [redacted] did not state the address at which the applicant lived when she was allegedly the affiant's landlord nor did she identify the time period during which she was allegedly the applicant's landlord.

Another of the undated declarations submitted is from [redacted] of Brooklyn, New York. Again, a preprinted portion of that declaration states,

(s)he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s):

To which the declarant appended,

before a person with authority to issue such oaths or affirmations. This decision considers and refers to those statements as declarations, rather than affidavits, and will not accord them the additional evidentiary weight given to sworn statements.

I have known [the applicant] for several years in New York. We worked at the same company and we became friends. I found him to be very hones [sic] and responsible individual and we are still friends presently. He was the one who advised me to do the Microsoft Office course. He made the time to help me when I was having problems and I was also successful. Today I can say thank to him for having a positive influence in my life.

[Errors in the original.]

did not identify the company at which he and the applicant allegedly both worked nor the period during which they worked there. Further, he did not indicate when he first met the applicant in the United States.

Another undated declaration submitted is from [redacted] of Flushing, New York. As with the others, a preprinted part of that declaration states,

(s)he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s):

To which the declarant appended,

This is to certify that I have known [the applicant] for quite a number of years. He is a very hard(-)working, diligent, responsible and dependable young man. [The applicant] has always presented himself as a responsible and well-mannered individual. He is a very honest, respectful and trustworthy young man from my interactions with him. Based on the number of years I have known [the applicant] and my interactions with him I consider him to be a person of good character. If you require any further information please feel free to contact me at [phone number.]

[Errors in the original.]

did not identify when she first met the applicant nor during what period of time, if any, he has resided in the United States.

Another declaration is from [redacted] of Brooklyn, New York. A preprinted part of that declaration states,

(s)he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s):

To which the declarant appended,

This letter is to inform you that I have know [the applicant] for over 25 years that's since 1981. [The applicant] and I live in the same apartment building for 10 years.

He is a very honest, respectful and trustworthy from the day I have know him. He is a very kind(-)hearted person. He ther [sic] for you when ever you need him. If you need any more information you could contact me at [phone number].

[Errors in the original.]

The last declaration is from [redacted] of Brooklyn, New York. A preprinted part of that declaration states,

(s)he is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s):

To which the affiant appended,

This is to certify that I have known [the applicant] from the year 1981. Myself [sic] and [the applicant] attended a community school – we did classes in learning to operate computers – [the applicant] is a level(-)headed and honest worker, his character is outstanding, he is a diligent person, - in all my dealing [the applicant] he was always punctual, I recommend [the applicant] highly – as the person to fit the possession that I would like for myself.

[Errors in the original.]

implied, but did not state, that the applicant was in the United States during 1981.

The applicant submitted the instant Form I-687 on November 29, 2005. With the application the applicant provided no evidence that he entered the United States prior to January 1, 1982, nor that he resided in the United during the period required by section 245A(a)(2) of the Act.

On January 11, 2006 the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) in this matter, noting that the applicant had failed to provide the required evidence. The applicant responded by sending the above-described declarations of [redacted] and [redacted]

In a second NOID, dated July 3, 2006, the District Director, New York, stated that the evidence then in the record was insufficiently detailed and insufficiently reliable to show that the applicant entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status for the requisite period, and was therefore insufficient to support the applicant's claim of eligibility.

The director indicated that CIS intended, therefore, to find the applicant ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice. In response, the applicant submitted the above-described declarations of [redacted] and [redacted], and the affidavit of [redacted]

In the Notice of Decision, dated August 8, 2006, the director denied the application based on the reasons stated in the NOID. The director determined that the applicant had failed to credibly demonstrate entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States thereafter. On appeal, the applicant submitted his August 19, 2006 letter.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, until the date the applicant filed 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.

The chronology of [REDACTED]'s declaration is difficult to follow. Although she appears to state that she has known the applicant from 1979 to 2006 she also appears to indicate that the period encompassed only ten years, or possibly ten years plus several more. In any event, she indicated that she met the applicant in the United States during 1979, which is directly contradicted by the applicant's assertion, at his interview, that he first entered the United States during 1980, and his assertion on his August 19, 2006 letter that he entered the United States during April 1981.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The declarations of [REDACTED] and [REDACTED] do not indicate when they first met the applicant in the United States. As such they are not evidence that the applicant entered in the United States before January 1, 1982 and resided in the United States thereafter until the date he filed or attempted to file his initial Form I-687 application.

In his January 23, 2006 affidavit, [REDACTED] did not attest to ever having seen the applicant in the United States or ever having been to the United States himself. Rather, he stated that he knew the applicant for 30 years prior to his departure from Trinidad and Tobago for the United States, but did not state when that departure took place. The applicant has stated, on various forms in the record, however, that he was born on December 19, 1955. If the applicant and the affiant were acquainted from birth, and the affiant knew the applicant for 30 years before he left for the United States, then the applicant entered the United States no earlier than 1985. This affidavit makes clear, therefore, that the applicant did not enter the United States prior to January 1, 1982.

Even the applicant's own statements pertinent to his first entry into the United States vary. At his June 1, 2006 interview he stated that he entered the United States for the first time at JFK airport during 1980, without specifying further. In his August 19, 2006 letter, he stated that he first entered the United States during April of 1981.

[REDACTED] and [REDACTED] state that they have known the applicant since 1981. They imply, but do not state, that the applicant was in the United States during 1981. Even if the [REDACTED]

and [REDACTED] had clearly stated that the applicant entered the United States prior to January 1, 1982, and that he resided in the United States during the required period, in view of the many serious, unresolved contradictions and discrepancies in the record, their declarations would not have been sufficiently credible to demonstrate eligibility.

The applicant failed to sustain his burden of establishing continuous unlawful residence in the United States from prior to January 1, 1982 until he filed his application as required under Section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on those bases, which have not been overcome on appeal.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. 8 C.F.R. § 245a.2(d)(5). Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.