

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

41

FILE: [REDACTED]
MSC 06 067 11212

Office: CHERRY HILL NJ

Date: **JUN 09 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Cherry Hill, New Jersey, denied the application for temporary resident status made 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). 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 (the 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 during the requisite period.

On appeal, counsel asserted that the evidence submitted adequately demonstrates the applicant's 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 is filed. Section 245A(a)(2) of the Immigration and Nationality Act (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). 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 "[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 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 furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. Here the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 6, 2005. 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 showed his first address in the United States to be [REDACTED] in North Bergen, New Jersey from November 1981 to February 1990. The record contains:

- A form affidavit from [REDACTED]. That affidavit states that the applicant lived at [REDACTED] from November 1981 to December 1989. A preprinted portion of that affidavit states, "I have known [the applicant] since the year 1981, when he first came to the United States of America." This office notes that the affidavit asserts that the applicant lived at "[REDACTED]" from November 1981 to December 1989, whereas the applicant stated, on the Form I-687 application, that he lived at "[REDACTED]" from November 1981 to February 1990. Given that discrepancy, this office will accord that affidavit no credibility. Further, 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).

Because of the discrepancies in this item of evidence, the balance of the applicant's evidence will be accorded less credibility than would otherwise have been the case.

- A form affidavit from [REDACTED] of Fitzgerald, Georgia. The preprinted portion of that affidavit states,

I, the undersigned _____ aged __ years recently residing _____ do hereby state and declare onsolemn and affirmation as under;

1. That Mr, _____ is my _____ and as such I know him since November 1981 in U.S.A. and also closed relations. [W]e aught to attened social and religious occasions at each other family and we were attending the same. [W]e were lived same times period North Bergun, and Brigantine.NJ

2. I am stating that he lived [REDACTED] Notth Bergun,NJ for period from November 1981 to February 1990. There after he moved [REDACTED] Bergun,NJ for period end December 1990. There after he moved to New York,NY. There after he moved to Abcecon.NJ. There after he moved to Stearling Hts,MI. There after moved to Atlantic city,NJ. There after he moved to Brigantine.

[Errors in the original.]

To that preprinted form the affiant added his name, age, address, and the date. He described his relationship to the applicant as "friend," although he also appears to have indicated, in the preprinted portion of the affidavit, that he is a close relative of the applicant. The affiant signed the document and had it notarized. The affiant apparently dictated no other part of the content of that affidavit.

The affiant, who attested that he now lives in Georgia, stated that he previously lived in North Bergen¹ and Brigantine, New Jersey when the applicant lived there. Because the affidavit was apparently prepared for the affiant with the details of the applicant's residence in the United States preprinted on it, the affiant does not appear to have been attesting to facts based on his own knowledge.

In any event, as was noted above, because of the unresolved discrepancy between the applicant's residential history as reported on the Form I-687 and the applicant's residential history as attested to by [REDACTED], the credibility of the instant affidavit, from [REDACTED] is diminished and it will be accorded little evidentiary weight.

¹ This office notes that '[REDACTED]' is the correct spelling.

- A sworn statement from the applicant taken by an immigration officer on May 1, 1994. In that statement, the applicant stated that he entered the United States during 1981 with a tourist visa. Because of the discrepancy between the residential history provided by the applicant and that in the affidavit attested to by [REDACTED], this office accords very limited credibility to the applicant's statement that he entered the United States during 1981.
- Two envelopes addressed to the applicant. One of the envelopes submitted is addressed to him at the address at which he claims to have lived during the entire period of requisite residence. The other is addressed to him at the business at which he claims to have worked during the entire period of requisite residence. Those envelopes were apparently provided to support the proposition that the applicant lived and worked at those addresses during the requisite period. As neither of them is postmarked or otherwise dated, however, they contain no indication of when they were addressed, or that they were mailed to the applicant during the requisite period, or even that they were mailed at all. As support for the applicant's claim of residence in the United States during the requisite period, those envelopes are accorded no evidentiary weight.

In a Notice of Intent to Deny (NOID), dated June 20, 2006, the director noted that the only evidence submitted to support the applicant's assertion that he was present in the United States prior to January 1, 1982 and during the requisite period were the form affidavits described above.

In response, the applicant submitted the envelopes described above and a letter dated July 18, 2006. In the letter the applicant reiterated that he entered the country in 1981 and asserted that the affidavit and the envelopes submitted sufficiently demonstrate the veracity of that assertion.

In the Notice of Decision, dated July 20, 2006, the director noted that, although the applicant claimed to have been in the United States at the time, a visa was issued to him in India during 1983. The director noted that, although the applicant stated on the application and at his June 20, 2006 interview that he first entered the United States during November 1981, and that he did so without inspection, the applicant stated at a 1994 interview by an immigration officer that he first entered the United States during 1981 on a tourist visa.

The director further noted that the applicant claimed that he was present the United States for more that one year and then departed and that the applicant subsequently received a tourist visa when his purpose in entering the United States was to resume his residence. The director found the applicant inadmissible to section 212(a)(9)(B)(i)(II) of the Act as an alien seeking admission to the United States within ten years of departing after being unlawfully present in the United States for more than one year. The director also found the applicant inadmissible pursuant to

section 212(a)(6)(C)(i) of the Act as having procured a visa by fraud or willfully misrepresenting a material fact.²

On appeal, counsel did not address the discrepancy in the affidavit from [REDACTED]. As to the affidavits submitted, counsel stated that the affiants may have moved and, in any event, do not speak English well, but that the affidavits should be regarded as credible because CIS has not contacted the affiants.

Counsel stated that the applicant then had no additional documentation of his residence in the United States during the requisite period, but was “in the process of collecting some of the identification for the affiants who provided him with affidavits”³ Counsel asserted that the applicant had obtained an Indian passport through an agent during 1983, although he was then present in the United States. Counsel stated, apparently referring to the applicant’s alleged initial entry into the United States during 1981, that the applicant does not recall ever stating that he entered the United States using a tourist visa and that, if he did, it was a miscommunication.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The envelopes submitted, as was noted above, bear no postmarks or any other indication that they were mailed during the period of requisite residence or at any other time. They are no evidentiary value in demonstrating the applicant’s presence in the United States during the requisite period.

The affidavit of [REDACTED] is accorded no credibility because the residential history it attests to and the residential history the applicant asserted on the Form I-687 application are inconsistent.

² Within the decision of denial, apparently as an alternative basis for denial, the director alluded to the possibility that the applicant may not actually have attempted to file a previous Form I-687 and, thus, may not be eligible for LULAC or CSS/Newman class membership. However, the director also denied the applicant based on the applicant’s inadmissibility and his failure to demonstrate continuous residence in the United States during the period required by section 245A(a)(2) of the Act, without referring the applicant to a special master, which is required by the CSS/Newman settlement agreement in cases denied for failure to qualify for class membership. Thus, the director has treated the decision of denial as a decision on the merits. Because the district director issued a decision on the merits, this office finds that the application was not denied for failure to demonstrate class membership, and will treat the decision as a denial on the merits. This office will only address the decision on the merits. The issue of class membership will not be discussed further.

³ Although almost two years have submitted since counsel submitted the instant appeal, no further documentation pertinent to the applicant’s affiants has been received.

The remaining affidavit, that of [REDACTED] would be accorded little credibility as it provides scant detail of the relationship of the affiant to the applicant. Further, the unresolved discrepancy in the affidavit of [REDACTED] detracts from the credibility of all of the other evidence in the record, rendering this affidavit even less credible.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. For the reasons stated above, the evidence upon which the application relies is of little to no credibility.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Given the paucity of credible supporting documentation he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

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