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[REDACTED]

FILE:

MSC-06-062-20803

Office: NEW YORK

Date:

MAR 19 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

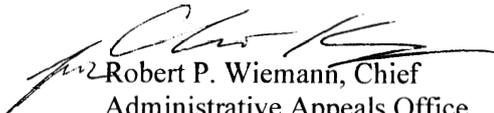
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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. 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 that the affidavits contain addresses and phone numbers for purposes of verification and that the applicant has submitted sufficient evidence to establish his eligibility for temporary residence 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.* 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit from [REDACTED], dated November 13, 1989, in which she stated that she was the applicant's landlord and that the applicant resided at [REDACTED] Brooklyn, New York, from December of 1982 to May of 1986. She also stated that she collected monthly rents from him. The applicant submitted a second affidavit from [REDACTED], dated April 24, 1991, in which she stated that she was the applicant's landlord and that he resided at [REDACTED] Brooklyn, New York from August 17, 1984 to May 31, 1986. The applicant submitted a third affidavit from [REDACTED] in which she stated that she was the applicant's landlord, that he resided at [REDACTED] Brooklyn, New York, from October 17, 1981 to May of 1986, and that she collected monthly rent from him. There has been no independent documentary evidence, such as rent receipts, to substantiate these claims. Furthermore, the claims contradict each other. The applicant has failed to provide a plausible explanation for these multiple inconsistencies. It is further noted that the attestations do not support the applicant's claim of residence in the United States since prior to January 1, 1982. Because the attestations are inconsistent and because they are lacking in information and are not amenable to verification, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted an affidavit from [REDACTED] in which he stated that that the applicant resided at [REDACTED] Brooklyn, New York, from May of 1986 to September of 1988. This statement is inconsistent with the applicant's Form I-687, part 30, where he indicated that he lived at the [REDACTED] residence only until August 1988. The affiant also stated that he was the applicant's landlord and that he collected monthly rents from him. There has been no independent documentary evidence, such as rent receipts or cancelled checks, to substantiate this claim. It is further noted that the attestation does not support the applicant's claim of residence in the United States since prior to January 1,

1982. Because the attestation is lacking in information and because it is not amenable to verification, it can be accorded only minimal weight in establishing the applicant's residency in the United States during the requisite period.

The applicant submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they are friends with the applicant and that they meet with each other often. They also indicated that the applicant's address from October of 1981 to May of 1986 was [REDACTED], Brooklyn, New York. This information is in direct conflict with the statement made by the applicant on his Form I-687 application at part #30 where he indicated that he resided at [REDACTED] Brooklyn, New York from December of 1982 to May of 1986. There is also a grave discrepancy in the information provided by the applicant's alleged landlord, [REDACTED], and the declarants. These inconsistencies call into question the affiants' ability to confirm that the applicant resided in the United States during the requisite period. Because these declarations conflict with other information contained in the record, doubt is cast on assertions made by the declarants. The declarants' statements conflict with other evidence in the record, hence, very minimal weight can be afforded to them in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit dated February 8, 1991 from the president of [REDACTED] in which she stated that the company employed the applicant as a gardener/maintenance worker from November 15, 1981 to January 1, 1984. Here, the affidavit does not conform to regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period. In addition, the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarant.

The applicant also submitted a letter from [REDACTED] General Contractor in which he stated that he employed the applicant as a carpenter and steelworker from January of 1984 to 1989. The letter does not conform to regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, the exact period of employment, periods of layoffs, or whether the information was taken from official company records. It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarant. Therefore, the statement can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant on June 28, 2006, in which she determined that the affidavit and letter of employment submitted by [REDACTED] and [REDACTED], General Contractor were not credible because they were not listed as registered companies in the State of New York. She also determined that the affidavits submitted by the applicant were not amenable to verification.

In response to the NOID, counsel asserted that the affidavits contained the full name and address of the affiants and that they were able to testify under oath. He further stated that the letters of employment are amenable to verification because they contain names and telephone numbers to contact.

In denying the application the director noted that the applicant did not submit any new evidence to overcome the points in the NOID, and that the affidavits submitted failed to meet the statutory criteria.

On appeal, counsel restates his assertions in rebuttal to the NOID, and resubmits duplicate copies of the affidavits.

Here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations that conflict with the statements made by the applicant in his Form I-687 application. It is also noted that the three attestations of [REDACTED] are contradictory and are inconsistent with the applicant's statements made on his Form I-687 application. It is further noted that the employment letters submitted by the applicant fail to conform to regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i).

The absence of sufficiently detailed documentation to corroborate 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 unresolved inconsistencies in the record and 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.