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FILE: [REDACTED]
MSC-06-027-14240

Office: NEW YORK

Date: OCT 03 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 "Robert P. Wiemann".

for 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 noted that the applicant had failed to respond to the Notice of Intent to Deny as requested. 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, the applicant asserts that he has been in the United States since prior to January 1, 1982.

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).

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) 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; 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.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 27, 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 indicated that he resided at [REDACTED] apartment [REDACTED] Brooklyn, New York, but did not list his dates of residence at that address. Similarly, at part #33, the applicant indicated that he was employed at Abbot Paint & Varnish in Brooklyn, New York, but did not indicate his dates of employment.

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

- An undated declaration from [REDACTED] of The Church of the Holy Innocents, Brooklyn, New York, in which he stated that the applicant, who resides at [REDACTED] apartment # [REDACTED], is an active member of the parish. He further stated that the applicant attends services regularly. This statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations and associations with clubs, organizations, churches, unions, or businesses, and did not list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States throughout the requisite period. Because this declaration contains testimony that conflicts with what the applicant indicated on his Form I-687 application, doubt is cast on assertions made in the declaration. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the petitioner to resolve any inconsistencies in the record by

independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the letter is undated and does not indicate the dates of the applicant's membership, nor does it establish the origin of the information being attested to. It is further noted that the letter does not support the applicant's contention that he was present in the United States before January 1, 1982. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record and 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 declaration dated October 5, 2005 from [REDACTED] the CAMBA Supervisor of the Adult Literacy Center in Brooklyn, New York, in which she stated that the applicant was a former English as a Second Language (ESL) student at the Church Avenue Merchants Block Association, Inc., which is a community-based organization, and that she has known him since he registered for classes. Here, the declarant has failed to indicate the dates of the applicant's enrollment in the ESL program, and therefore, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration dated October 5, 2005 from [REDACTED] of Abbot Paint and Varnish Company in which he stated that he interviewed the applicant in reference to a lacquer and stain technologist position and that he qualifies for the position. The declarant requested that the applicant's immigration case be expedited so that he can offer the applicant a permanent position with his company. The record contains another declaration dated April 7, 2006 from the same declarant in which he stated that the applicant possesses the stain and lacquer expertise needed by the company, and that his eagerness to work and ability to speak English and Spanish are also beneficial to the company. Here, the declarant's statements are inconsistent with the applicant's statement that he made on his Form I-687 application, at part #33 where he listed the Abbot Paint and Varnish Company as his employer but, fails to indicate the dates of employment. It is also noted that the applicant stated under oath during his interview with immigration officials on April 12, 2006 that he worked odd jobs from January 1, 1982 to May 4, 1988. The inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because the declarations contain testimony that conflicts with what the applicant stated on his Form I-687 application and during his interview with immigration officers, doubt is cast on the assertions made, and therefore the declarations cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

The director issued Notices of Intent to Deny (NOID) on November 22, 2005, April 13, 2006 and July 27, 2006, noting that the applicant had failed to submit evidence to establish his entry into the United States

prior to January 1, 1982 and his continuous residence during the requisite period. The director also noted that the affidavits submitted by the applicant were not credible and were not amenable to verification.¹

In response to the director's NOID the applicant submitted the following attestations:

- A declaration dated December 6, 2005 from [REDACTED] in which he stated that he has known the applicant for 20 years and that the applicant is an honest and hard working person. Here, the affiant fails to state where and when in 1985 he met the applicant or the frequency with which he saw the applicant throughout the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] dated April 7, 2006 in which he stated that he has known the applicant for 25 years. Here, the affiant's statement directly conflicts with his declaration dated December 6, 2005 in which he stated that he has known the applicant for 20 years. There has been no explanation given for this inconsistency. Because the affiant's statements are inconsistent and because the affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to meet 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, the applicant reasserts his claim that he entered the United States prior to January 1, 1982, and that he was present in the United States from November of 1986 to the date of filing his Form I-687 application. He does not submit any additional evidence on appeal.

The applicant has not provided sufficient credible evidence to establish his continuous unlawful residence in the United States during the requisite period. The applicant fails to address on appeal the issues raised by the director in the NOID and in the denial.

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 applicant's reliance upon documents that are irrelevant to his claim, lacking in detail, or which are inconsistent with his

¹ The AAO notes that the director stated in his decision that the applicant had failed to respond to the NOID. However, the record of proceeding shows that the applicant responded to the NOID on August 30, 2006. To the extent that the applicant did respond to the director's request for additional evidence, the director's statement will be withdrawn.

statements made in his Form I-687 application and during his interview with immigration officer, 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.