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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

OCT 06 2008

MSC 05 235 14497

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. 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.

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, Chicago. The matter is now before the Administrative Appeals Office 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 initially entered the United States prior to January 1, 1982 and had continuously resided in the United States during the requisite period. On appeal, counsel asserted that the director failed to consider all of the evidence.

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 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, 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.

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.

On the Form I-687 application, which the applicant signed on May 14, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that from April 1981 to October 1987 he lived at [REDACTED] in Chicago, Illinois, and that from November 1987 to June 1996 he lived at [REDACTED] in Chicago, Illinois.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from June 1981 to December 1988 as a cashier at [REDACTED] at State and 51st in Chicago, Illinois, and for a gas station at [REDACTED] in Chicago, Illinois, beginning during April 1989. The applicant did not list any other employment during the period of requisite residence.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that his earliest absence from the United States after his initial entry was from December 1987 to January 1988.

The pertinent evidence in the record is described below.

- The record contains an affidavit, dated February 17, 1990, from [REDACTED], who stated that he was the applicant’s landlord from April 20, 1981 to October 20, 1987, when he lived

at [REDACTED] in Chicago, Illinois. Mr. [REDACTED]'s address and phone number were not provided on that affidavit. When an officer of CIS attempted to contact [REDACTED] to confirm the information on the affidavit, directory assistance reported that it had no listing for [REDACTED]. When asked for additional contact information, the applicant stated that he does not know where [REDACTED] is. Because the information in the affidavit is unverifiable, it will be accorded minimal evidentiary weight.

- The record contains a declaration, dated January 10, 1990, from [REDACTED], on letterhead of [REDACTED] of Chicago, Illinois. Mr. [REDACTED]'s position with that company, if any, is not stated. Mr. [REDACTED] stated that the applicant worked for that company as a sales person from June 1981 through December 1987, and from January 1988 through February 1989. This office notes that differs somewhat from the applicant's version of his employment history on the instant Form I-687, on which the applicant stated that he worked for that company until December 1988.

Further, although that letter bears what purport to be the seal and signature of a notary public, that ostensible notary did not assert that he confirmed [REDACTED]'s identity or administered an oath to him. That declaration does not, therefore, qualify as an affidavit, and will not be accorded the additional evidentiary value applicable to affidavits and other sworn statements. Further, that an ostensible notary is unfamiliar with standard form attestation applicable to sworn statements raises the suspicion that the person who applied that signature and seal is not, in fact, a notary.

This employment verification letter does not include the applicant's address at the time of his employment, and does not state whether the information provided was taken from company records and whether and where those records are available for inspection, or in the alternative, why the records are unavailable. It does not, therefore, conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i). It will be accorded less evidentiary value than it would have if it conformed to the applicable regulation.

Further, an officer of CIS attempted to locate [REDACTED] with the contact information provided, but reported that the information was insufficient. When asked for additional contact information, the applicant reported that he believed [REDACTED] has died.

Because of the conflicting employment history, the irregularity in the notary's attestation, the failure of the declaration to conform to the regulations, and its unverifiability, the declaration of Malik Arshad will be accorded minimal evidentiary value.

The record contains a letter, dated May 15, 2002, from [REDACTED] of [REDACTED] Auto Service at [REDACTED] in Chicago, Illinois, on that company's stationery. That letter states that the applicant worked at that location since 1981. This office notes that the applicant, on the Form I-687, stated that he started working at that location in April 1989. An officer of CIS contacted [REDACTED] on July 15, 2003. Mr. [REDACTED] confirmed that the applicant had worked for that company for 13 years, since 1989. Because the author of

that letter contradicted the contents of the letter, it will be accorded no weight as support for the proposition that the applicant worked for that company prior to 1989.

- The record contains a G-325A Biographic Information form that the applicant signed on July 25, 2001. On that form the applicant stated that he began working for [REDACTED] Auto Service during January of 1990. This office notes that this conflicts with the applicant's assertion, on the Form I-687, that he began working for that company during April 1989, and more markedly conflicts with the assertion, on the employer verification letter from Auto Service, that he began working there during 1981.
- The record shows that, on October 17, 2005, the applicant was arrested, in Oakbrook Terrace, Illinois, for a violation of section 212(a)(6)(A) of the Act. The disposition of that charge, which is a misdemeanor, is unknown.

Both the Form I-687 and the Form G-325 conflict with the information the applicant provided on the instant application. 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, 591-92 (BIA 1988).

- The record contains the applicant's Social Security Statement issued by the Social Security Administration on February 11, 2003. That statement shows that the applicant declared income for social security purposes during each year from 1989 to 2001, but declared no income during previous years. That statement provides no support for the applicant's assertion that he worked and resided in the United States prior to 1989.

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

In the Notice of Decision, dated October 14, 2005, the director observed that the applicant's evidence of continuous residence in the United States during the requisite period is unverifiable, and denied the application.

On appeal, counsel observed that the decision of denial did not notify the applicant of his right to appeal this matter before a Special Master, thus implying that such a right exists in the instant case. Counsel also urged that the director had not considered all of the evidence, but provided no additional argument on that point.

Initially, this office notes that the right to appeal before a Special Master is limited to applicant's whose applications were denied based on failure to demonstrate class membership. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. The instant application was denied based on the applicant's failure to demonstrate that he entered the

United States prior to January 1, 1982 and continuously resided in the United States during the requisite period. No right to appeal before a Special Master exists in this case.

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 February 17, 1990 affidavit from [REDACTED], the January 10, 1990 declaration from [REDACTED], and the May 15, 2002 letter from [REDACTED] are accorded minimal evidentiary value for the reasons detailed above. The previous Form I-687 application and the Form G-325A contradict some of the applicant's assertions pertinent to his residential history and employment history, and thereby cast additional doubt on the applicant's assertions and his evidence, rather than supporting his case. The remaining item of evidence, the applicant's Social Security Statement, does not indicate that the applicant was in the United States prior to 1989.

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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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