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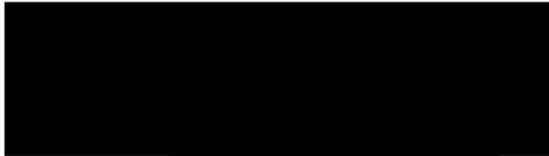
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-279-10068

Office: NEWARK

Date: SEP 02 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.

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, on July 6, 2005 (together, the I-687 Application). 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 as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a statement. On appeal, the applicant states that the director should “take into account the passage of time and [his] difficulty in obtaining corroborative documentation of unlawful residence.” The applicant also states that his application should not be denied “solely because [he] seek[s] to establish continuous unlawful residence only with affidavits, declarations, and dated pictures.” Finally, the applicant argues that the denial is “contrary to the terms of the law” and “an abuse of discretion.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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 periods, 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits and declarations; copies of the applicant's passports issued on January 28, 1986, July 13, 2000, and November 29, 2005; copies of the

applicant's visitor's visas issued on February 4, 1986 and on March 28, 2001; a copy of the applicant's Form I-94 dated April 8, 2001; a copy of the applicant's marriage certificate stating that he was married in Brazil on August 21, 1986; a copy of the applicant's employment authorization card issued on February 22, 1990; a copy of the applicant New Jersey driver's license issued on May 15, 2001; a copy of a United States Treasury check; copies of money orders; a copy of a bank statement; a copy of a health insurance letter; copies of the applicant's income tax documents; bills; and photographs. The applicant's passports, employment authorization car, and employment authorization card are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending Form I-687 Application as well as a prior Form I-687, dated January 16, 1990.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- A notarized affidavit from [REDACTED] dated January 17, 2006. The affiant states that she first met the applicant in San Diego, California in September 1981. The affiant also states that she knows the applicant as a "housekeeper." Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how she dates her initial meeting with the applicant or how frequently she had contact with the applicant. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated November 16, 2005. The affiant states that she has known the applicant since 1982 and that she first met the applicant "at a friend's house." Although the affiant states that she has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. For instance, the affiant does not indicate how she dates her initial meeting with the applicant or how frequently she had contact with the applicant. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated November 27, 2005. The affiant states that he has known the applicant since 1980 "as a friend." The affiant also states that he met the applicant during a birthday party at his house in Brazil. Although the affiant states that he has known the applicant since 1980, the statement does not provide a

date for when the affiant first met the applicant in the United States. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated January 2, 1990. The affiant states that he has known the applicant since the applicant arrived from Brazil in September 1981." The affiant also states that the applicant lived with him in New York. The affiant states that the applicant "was paid for his room and board in exchange for working at [the affiant's] house since his arrival until April of 1986." Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 9-year relationship with the applicant. For instance, the affiant does not indicate where he met the applicant, how he dates his initial meeting with the applicant, or how the applicant came to work for him and live at his house in New York. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested).
- An unnotarized letter on Quality Machine Company letterhead signed by [REDACTED] President and dated October 28, 1986. Mr. [REDACTED] states that the applicant "is employed by Quality Machine Company" and that the purpose of the letter is so that the applicant "may cash his payroll check at Midlantic National Bank/North." Although the statement is on company letterhead, it is not notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; the exact period of employment; whether the information was taken from official company records and where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested). The letter does not indicate that the applicant entered the United States prior to January 1, 1982 and resided continuously in the United States throughout the requisite period. Given these deficiencies, this letter has minimal

probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- Copies of the applicant's Internal Revenue Service (IRS) Form 1040 and New Jersey Form 1099-G for 1986; copies of the applicant's IRS Form W-2 and Form 1040 for 1987; and a copy of the applicant's IRS Form W-2 and Form 1040 for 1988.¹ A copy of a letter from the IRS dated August 3, 1987 and addressed to the applicant. A copy of U.S. Treasury check dated December 1987 and payable to the applicant. These documents are evidence of the applicant's residence in the United States in 1986, 1987, and 1988.
- A copy of the applicant's bill from New Jersey Bell dated February 23, 1988; a copy of the applicant's National Community Bank statement dated December 29, 1987; a copy of a notice from Blue Cross Blue Shield dated April 2, 1987; and copies of money orders dated March 21, 1987 and May 1, 1987. Although these documents indicate presence in the United States on the date listed, they have no probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and residence in the United States throughout the requisite period.
- Several photographs. The photographs do not establish that the applicant was present in the United States during the requisite period. The AAO is unable to determine that the photographs were taken in the United States. Given these deficiencies, these photographs have no probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains several form-letter declarations that are not signed, dated, or notarized. The AAO is unable to determine if the declarants actually wrote these declarations. Therefore, these declarations have no probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States on September 12, 1981. On September 27, 2005, the applicant submitted a revised part #32 to the Form I-687. In the revised

¹ The record of proceeding contains a marriage certificate for the applicant stating that the applicant was married on August 21, 1986 in Brazil. The AAO notes that the applicant indicated that he was single on all three IRS Forms 1040. 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 applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

part #32, the applicant states that he visited Brazil twice from March 1986 to April 1986 and from July 2000 to March 2001. The AAO notes that the record of proceeding contains a visitor's visa for the applicant issued on February 4, 1986 in Rio de Janeiro and a marriage certificate stating that the applicant was married in Brazil on August 21, 1986. In a notarized affidavit dated November 29, 1989, the applicant states that he sent money to a friend in Brazil in order for that friend to obtain a passport and visa for the applicant. The record of proceeding contains no explanation as to how the applicant was married in Brazil while he claims to have been present in the United States. The applicant's IRS Forms 1040 for 1987 and 1988 list the applicant as single. The affidavit of [REDACTED] and the unsigned statement of [REDACTED] indicate that the applicant and his wife lived in their home from 1981. 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 applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on July 12, 2006. The director denied the application for temporary residence on August 22, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that the director should "take into account the passage of time and [his] difficulty in obtaining corroborative documentation of unlawful residence." The applicant also states that his application should not be denied "solely because [he] seek[s] to establish continuous unlawful residence only with affidavits, declarations, and dated pictures."

The AAO has taken the passage of time into consideration. As noted above, 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. The record of proceeding contains several inconsistencies. On appeal, the applicant does not provide any independent objective evidence that resolves the inconsistencies in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Finally, the applicant argues that the denial is “contrary to the terms of the law” and “an abuse of discretion.” The applicant fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the application.

The AAO notes that in response to the director’s NOID, the applicant argued that he was unable to prepare adequate affidavits due to the ineffective assistance of [REDACTED] and [REDACTED]. The record of proceeding contains a copy of an email that the applicant claims to have sent to [REDACTED]. Any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). On appeal, the applicant did not provide evidence that he meets these requirements.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the requisite period seriously detracts from the credibility of his 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, 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.

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