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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-250-11149

Office: LOS ANGELES

Date: **SEP 22 2008**

IN RE: Applicant: [REDACTED]

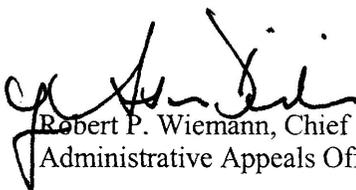
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, Los Angeles. 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 director's decision was in error and that the applicant has submitted sufficient evidence to establish his eligibility for temporary resident 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).

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 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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 7, 2005. The applicant, when asked to list his employment history since being in the United States, indicated at part #33 of the application that he was employed in Los Angeles, California at [REDACTED] Fashion from March of 1981 to September of 1984; [REDACTED] Fashion from October of 1984 to December of 1985; Undated Stitch Inc. from January of 1986 to February of 1987; [REDACTED] Fashion from March of 1987 to January of 1988; and Updated Stitch Inc. from February of 1988 to September of 1989.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted copies of a [REDACTED] Open ticket dated for the January 10-16, 1983 season, and sixteen pay stubs from Updated Stitch, Inc.; none of which had the applicant’s name on them and thirteen which had no dates of employment on them. It is noted that three copies of the pay stubs were dated 1988. The director noted that the applicant stated under oath during his interview with immigration officers on February 1, 2007 that he began working immediately upon arriving in the United States in December of 1980, and that he was not paid in checks until 1990; hence the explanation given for his lack of documentation. The director determined that this evidence was insufficient in that it did not show the applicant’s name, and

therefore, no weight could be given to such evidence. On appeal, counsel asserts that the pay stubs should be considered as the applicant cannot be held responsible for the way in which his employer documented his receipts. The applicant does not submit any evidence on appeal. Here, there has been no explanation given for why the applicant's name does not appear in the designated area on the pay stubs, or why, in direct contradiction, the applicant stated during his immigration interview that he had not been paid by check until 1990.

The applicant also submitted the following attestations as evidence:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981, that he knows him well, and that the applicant has resided in the United States the whole time that he has known him. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since the beginning of 1981. She further stated that at that time, the applicant was living in an apartment that he shared with her sister and a few other people. She also stated that after the applicant moved out of the apartment they stayed in touch with one another, and that to date he lives approximately one mile from her. Here, the affiant fails to specify the applicant's place of residence, the frequency with which she saw and communicated with him, or any other detail that would lend credence to her claimed knowledge of the applicant and his residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since January of 1981 when the applicant began working with him at a clothing factory by the name of [REDACTED] in Los Angeles, California. He also stated that he and the applicant worked together until 1985, and that thereafter, they stayed in contact with each other by attending barbecues, parties, and holiday celebrations together. Here, the statement made by the affiant is inconsistent with the statements made by the applicant on his Form I-687 application at part #33 where he indicated that he was employed in Los Angeles, California by [REDACTED] Fashion from March of 1981 to September of 1984; and [REDACTED]'s Fashion from October of 1984 to December of 1985. Because the affidavit contains testimony that conflicts with what the applicant indicated on his Form I-687 application, doubt is cast on assertions made in the affidavit. 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. 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). Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the Form I-687 application, the director noted that the applicant had failed to provide the preponderance of evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, counsel reasserts her claim that the applicant has submitted sufficient evidence to establish his eligibility for temporary resident status.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States during the requisite period. He has failed to overcome the issues raised by the director. Although the applicant claims to have resided in the United States since December of 1980, his first address on his Form I-687 application is not dated until 1985, and his employment history listed on the application is inconsistent with the evidence he has submitted.

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 evidence and statements that are inconsistent with statements he made, and his reliance upon affidavits 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.