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FILE: [Redacted]
MSC-05-208-10999

Office: NEW YORK

Date: SEP 29 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. 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 *Michael T. Henry*
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 April 26, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting that the information and documentation “submitted are insufficient to overcome the grounds for denial.” The director also noted that when [REDACTED] was contacted in order to verify the information in his letter dated March 3, 2006, [REDACTED] “could not recollect the details of the latter and count not verify the information.” The director denied the application as the applicant had not met her 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, an attachment to the Form I-694, and a new letter from [REDACTED]. On the Form I-694, the applicant states [REDACTED] has known her “since December 1981.” The applicant also states that [REDACTED] “knows that [the applicant has] resided in the United States in continuous unlawful status, except for brief absences, from before 1982 until the date that [the applicant] was turned away by the INS/QDE.” 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 she entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits and letters; a copy of the applicant's New York driver's license issued on June 23, 2001; and a copy of the applicant's employment authorization card issued on August 3, 2005. The applicant's New York driver's license and employment authorization card are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period.

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:

- Three identical form-letter affidavits from [REDACTED]. The affiants state that they have known the applicant in the United States and that they know that the applicant has lived "continuously and unlawfully in the United States from before January 1, 1982 until March 16, 1988 when the applicant [] visited a QDE to apply for the 1986 'amnesty' program." The affiants also state that the applicant told them "on or about March 16, 1988" that she had visited a QDE and was turned away. Although the affiants state that they have known the applicant since before January 1, 1982, the statement does not supply enough details to lend credibility to an at least 22-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A letter from the Qualified Designated Entity [REDACTED] signed by [REDACTED] QDE Director and dated March 16, 1988. The letter states "upon consideration we cannot accept your application and fee because you are found ineligible for the benefits you are filing for." The reason given for returning the applicant's application was that the applicant did not reside continuously in the United States since January 1, 1982 because she traveled outside of the United States and "returned either without inspection, or without prior INS permission, or improperly using some type of travel documentation." Although this letter is evidence that the applicant was present in the United States on March 16, 1988 and attempted to file a Form I-687 on that day, this letter has minimal probative value in supporting the applicant's claims that she entered the United States before January 1, 1982 and resided in the United States for the entire requisite period.
- A letter on Flushing Central Lions Club letterhead signed by [REDACTED], President and dated March 3, 2006. In this letter, the declarant states that he certifies that the applicant has been a "Lions member since December 1981" and a "good friend for many years." The letter also states that the applicant's fellow Lions members have known the applicant

“since her first entry into the United States prior to January 1, 1982” and that she has “resided in the United States in a continuous unlawful status.” The letter does not provide a date or a year for when the applicant first arrived in the United States or the source of the information regarding the applicant’s membership and residence in the United States. As noted in the director’s decision, CIS contacted the declarant in order to verify the statements in his March 3, 2006 letter. According to the director’s decision, [REDACTED] explained that he has been president since 2005 and does not have knowledge of [the applicant’s] arrival or residence in the United States” independent of the information provided by the applicant. [REDACTED] also stated that “information of a personal nature is not discussed at the monthly meetings.” Furthermore, the declarant “could not recollect the details of the letter and could not verify the information.” The AAO also notes that the applicant did not list an affiliation with the Flushing Central Lions Club at part #31 of the Form I-687. 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). Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 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 she claims to have entered the United States prior to January 1, 1982. The applicant has not submitted any additional evidence in support of her claim that she 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 March 9, 2006. The director denied the application for temporary residence on February 7, 2007. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant submits a new letter on Flushing Central Lions Club stationery signed by [REDACTED] President and dated March 5, 2007. In this letter, [REDACTED] states that the applicant has been a Lions member “since December 1981” and that he was a Lions member prior to becoming the “president of District 20K-1 in 2005.” [REDACTED] does not provide the source his information regarding the applicant’s membership and he also does not provide a date for when he became a member of the Flushing Central Lions Club. The second paragraph in [REDACTED]’s letter restates what was said in his March 3, 2006 letter regarding the applicant’s entry into the

United States prior to January 1, 1982 and her continuous residence in the United States. Finally, [REDACTED] explains that he was contacted by an immigration officer while he was in “a meeting.” [REDACTED] states that he does not recollect that he ever said that he does not have “knowledge of [the applicant’s] arrival or residence in the United States independently of the information” that the applicant told him. [REDACTED] also states that “a sudden call to ask the details of a letter I wrote about one year ago is difficult for me to remember the information especially when I was amid a meeting.” Although [REDACTED] claims to remember statements made regarding his not having independent personal knowledge of the applicant’s arrival and residence in the United States, he does not refute the statements in this letter. Given these deficiencies, this letter has minimal probative value in supporting the applicant’s claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

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. 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.

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 she 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.