



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC-06-084-15116

Office: NEW YORK

Date: **APR 30 2009**

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.

John F. Grissom
Acting 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 Director, New York, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining 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 failed to address, in response to the Notice of Intent to Deny, the discrepancies between the applicant's claim of continuous residence in the United States since before January 1, 1982 and the affidavit dated February 29, 1988 from [REDACTED] in which the affiant stated that the applicant was employed by him in Ecuador from November 1981 to March 1984. 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.¹

On appeal, counsel asserts that the applicant claims to have been absent from the United States between 1987 and 1998 for a short period of time due to a family emergency. Counsel also asserts that the applicant has obtained some documents in support of his claimed eligibility but has been unable to provide any additional documentation. The applicant does not submit any evidence on appeal.

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.

¹ The Form I-140, Petition for Prospective Immigrant Employee was dismissed by the Administrative Appeals Unit on May 24, 1989. The applicant's Form I-485, Application to Register Permanent Resident or Adjustment Status was denied on May 4, 2007.

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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of photographs that are not identifiable or verifiable. The applicant also submitted handwritten receipts dated October 1985 and November 1986. He submitted as evidence postal money order receipts whose dates of origin are 1984 and 1985 respectively. However, the receipts are dated (handwritten and typed), in the COD column on the receipt, March 3, 1982 and November 11, 1983. Here, the receipts appear to have been altered

altered, as the dates when the money order receipts were originated, 1984 and 1985, are later than the handwritten and typed dates when the applicant is said to have sent the money, 1982 and 1983. 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. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the documents.

The applicant submitted the following attestations as evidence:

- A letter dated September 13, 1989 from [REDACTED] of the Church of Saint Leo in which he stated that the applicant regularly worships at the church and that witnesses have told him that the applicant has been attending the church since May 1981. The declarant's statement is inconsistent with the applicant's statement on his current Form I-687 application, at part #31 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and he did not list any. 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 declaration does not state the address where the applicant resided during that period, nor does it establish the origin of the information being attested to and thus its reliability.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since May 1981 and that the applicant was employed as a helper at the [REDACTED] located at [REDACTED] in New York. Here, the affiant fails to specify his affiliation with the [REDACTED] or the specific dates of the applicant's employment. In addition, the affiant's statement is inconsistent with the applicant's current Form I-687 at part #33 where he stated under penalty of perjury that he was self employed from April 1981 to December 2005. It is also noted that the president of the [REDACTED] indicated on the Form I-140, Petition for Prospective Immigrant Employee, that the store was not established until January 1982.
- A letter dated September 14, 1989 from the manager of [REDACTED], located at [REDACTED] in New York, in which he stated that the store employed the applicant as a cashier for two years. The declarant does not list the dates of the applicant's employment. The declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, or whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

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 since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. Although the applicant claims to have been present in the United States since April 1981, he submitted a letter in support of his Form I-140 petition for employment dated February 29, 1988 from [REDACTED] in which he stated that the applicant was employed as an assistant manager at [REDACTED] from 1981 to 1984. It is also noted that the president of the [REDACTED] stated on the Form I-140 at part #13 that the applicant arrived in the United States in June 1984. The applicant has failed to address this contradiction and inconsistency. Neither the church letter nor the employment letters submitted on behalf of the applicant conform to regulatory standards. It is also noted that the declarants' statements are inconsistent with the statements made by the applicant.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 inconsistencies and contradictions that exist in the record and the general insufficiency of the evidence, it is concluded that the applicant 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.