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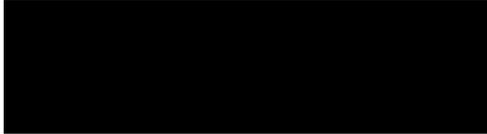
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U.S. Citizenship
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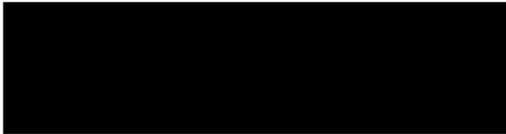
FILE: [REDACTED] MSC-05-28612633

Office: NEW YORK Date: DEC 14 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert R. 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. 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, the applicant asserted that due weight was not accorded to the witness affidavits confirming the applicant's presence in the United States before January 1, 1982.

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)(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).

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 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 (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 resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 13, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following Bronx, New York addresses during the requisite period: [REDACTED] from October 1981 to October 1986; and [REDACTED] from October 1986 to January 1994. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued November 15, 2005, the applicant provided two declarations. In his declaration, [REDACTED] stated that he first met the applicant in 1981 at church in the Bronx, New York. The declarant stated that he and the applicant met at the Sabbath School Study class in the church, and that the applicant is a very faithful church brother. This declaration fails to confirm the applicant resided in the United States during the requisite period. In addition, this declaration is inconsistent with the information provided on Form I-687, where the applicant failed to list any affiliations with churches. This inconsistency calls into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

The applicant also provided a declaration from [REDACTED]. The declarant stated that he first met the applicant in December 1981 at Bronx Church Temple. The declarant stated that the applicant is a member of the church the declarant attends, and the applicant attends services on a regular basis. This declaration fails to confirm the applicant resided in the United States during the requisite period. In addition, this declaration is inconsistent with the information provided on Form I-687, where the applicant failed to list any affiliations with churches. This inconsistency calls into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

In response to an additional Notice of Intent to Deny issued on April 15, 2006, the applicant submitted a declaration from [REDACTED]. The declarant stated that he met the applicant on June 12, 1981 in the Bronx, New York during their regular meeting on Saturday. The declarant also stated that the applicant has been a "fellow church member for all these years." Again, this declaration fails to confirm the applicant resided in the United States during the requisite period. This declaration is also inconsistent with the information provided on Form I-687, where the applicant failed to list any affiliations with churches. This inconsistency calls into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

In denying the 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 found 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, the applicant asserted that due weight was not accorded to the witness affidavits confirming the applicant's presence in the United States before January 1, 1982.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted declarations from three people concerning that period. All three declarations failed to confirm the applicant resided in the United States during the requisite period and were inconsistent with the information provided on Form I-687.

The absence of sufficiently detailed supporting 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 contradictions between the applicant's statements on his application and the supporting documents he submitted, and given his reliance upon documents 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.