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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-293-13284

Office: NEW YORK

Date: APR 02 2006

IN RE: Applicant: [REDACTED]

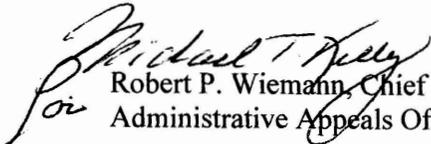
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 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. 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 asserts that he meets all of the criteria and conditions of eligibility under the provisions of the law.

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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on July 20, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] Bronx, New York, from August 1981 to February 1990 and his second address as [REDACTED], Bronx, New York, from May 2005 to the present. The applicant did not provide an address from March 1990 to April 2005. At part #33, the applicant listed his first and only employment in the United States as a self-employed vendor in New York, New York from May 2005 to June 2005. At part #32, the applicant listed one trip outside of the United States with a return date of April 2000 and did not provide a departure date.

The applicant submitted the following documentation:

- A notarized form-letter affidavit for [REDACTED] dated April 7, 2006. The affidavit states that [REDACTED] is a United States citizen, lives in Bronx, New York, and has personal knowledge that the applicant resided in the United States from 1981 to the present. Mr. [REDACTED] also states that he was introduced to the applicant by his aunt at a

wedding ceremony and that “he always visits his family in my apartment building.” The statement lacks any details that would lend credibility to a 25-year relationship with the applicant; it does not include the declarant’s telephone number, and thus cannot be verified. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement 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.

- A notarized form-letter affidavit for [REDACTED] dated April 7, 2006. The affidavit states that [REDACTED] lives in Brooklyn, New York and that he has personal knowledge that the applicant resided in United States from 1981 to the present. The affiant also states that the applicant’s father worked for him for ten years. The statement lacks any details that would lend credibility to a 25-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement 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.

In addition, the record of proceeding includes copies of the applicant’s passports, visa, Form I-94, the applicant’s employment authorization card issued on September 7, 2005, and the district adjudicator’s March 9, 2006 interview notes.

None of the evidence provided establishes that the applicant was physically present or had continuous residence in the United States from 1981 to 1988 and that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on March 24, 2006 and denied the application for temporary residence on July 27, 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.

In her decision and in the NOID, the director noted discrepancies between the applicant’s testimony during his March 9, 2006 interview and the information provided by the applicant on the Form I-687. First, during the interview, the applicant stated that he worked as a vendor beginning in 1981 for five to seven years. However, the Form I-687 only includes employment as a vendor for two months from May 2005 to June 2005. Second, during the interview, the applicant stated that he traveled to Gambia in 1992 for 28 days. However, the Form I-687 only

includes one trip to Gambia with a return date of April 2000 and no departure date. The director also stated that the affidavits submitted in support of the application do not appear credible.

On appeal, the applicant does not provide additional information or evidence in support of the applicant's claim that he was physically present or had continuous residence in the United States from 1981 to 1988 or that he entered the United States in 1981. The applicant does not address the director's statements regarding the inconsistencies between his testimony during his March 9, 2006 interview and the Form I-687. The applicant did not provide anything in support of his appeal and on the Form I-694 stated that he had additional evidence which he would submit within 30 calendar days. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, seriously detract 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 inconsistencies in the record and 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.