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FILE: [REDACTED]
MSC-06-080-10945

Office: NATIONAL BENEFITS CENTER Date:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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 Director, National Benefits Center. 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 submits a statement.

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 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 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 or her 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 shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 19, 2005. 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 showed his first address in the United States to be at [REDACTED] Queens, New York from July 1981 to May 1990. Similarly, at part #33, he showed his first employment in the United States to be self-employed as a New York City taxi driver at a salary of \$25,000.00, from October 1981 to present (i.e. August 25, 2005).

The applicant submitted his New York State driver’s license issued August 12, 2002, and a vehicle operator’s license from the New York City Taxi and Limousine Commission (expiration date June 18, 2006). The evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States for the requisite period.

The director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant’s residency, and as stated in the Notice of Intent to Deny (NOID) issued January 31, 2006, the director requested additional evidence.

In response, by the applicant’s letter dated February 9, 2006, he stated that “In the process of filling out the entire form I-687, there was no part of the application that expressly required me to provide any specific evidence.” No additional evidence was submitted.

The director denied the application for temporary residence on July 17, 2006. In denying the application, the director found that the applicant's evidence submitted was insufficient. The director stated that the evidence presented proved the applicant's presence in the United States since 2003, but not the applicant's entry into the United States before January 1, 1982, and his continuous residence in the United States in an unlawful status since such date and through the date the application is filed.

On appeal, the applicant submits additional evidence that he asserts proves his eligibility for status as a temporary resident under Section 245A of the Act.

The applicant has submitted the following relevant documents:

- Copies of his Federal Republic of Nigeria passport issued February 16, 1990, along with a CIS I-94 Departure Record card evidencing the applicant's entry into the United States in B-2 nonimmigrant status on May 19, 1990.

Since the passport was issued to the applicant in Nigeria and there is a nonimmigrant visa stamp issued in Lagos, Nigeria to the applicant by the United States consular office in May 1990, and there are no earlier entry stamps in that passport, this evidence indicates that the applicant entered the United States on May 19, 1990.

- A United States Social Security Administration statement of earnings for the application from 1997 through 2004.

Since the applicant has stated that he has been employed as a New York City taxi driver at a salary of \$25,000.00, from October 1981, reasonably the applicant would have proof of such employment and receipt of income, but none was submitted. The applicant submitted other receipts, notices and driver's licenses renewals that are all dated after January 1, 1982 and they cannot be relevant to demonstrate the applicant's presence in the United States before that date.

According to the regulation at 8 C.F.R. § 245a.2(d)(3)(i) past employment records may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself, letters from banks and other firms with whom he or she has done business. The earnings statement evidence demonstrates the applicant's employment and presence in the United States from 1997 but not the applicant's presence in the United States before that date.

- A physician discharge resume with an illegible date with a nursing discharge summary instructions record from Long Island College Hospital, Brooklyn, New York.
- A physician discharge resume dated March 4, 2003 (with the zero over-written on the form to read as an eight on the document in an attempt to change the date of admission to March 4, 1983).

If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In summary, the applicant has provided insufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence.

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 and contradictions 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 he 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.