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U.S. Citizenship
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Services

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FILE:

MSC-06-062-13309

Office: NATIONAL BENEFITS CENTER

Date: **APR 23 2**

IN RE:

Applicant:

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 the director's decision is erroneous. The applicant furnishes three affidavits attesting to his residence in the United States during the requisite period.

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 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 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 on December 1, 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 showed his first address in the United States to be in Newark, New Jersey from August 2002 until January 2003. The eligibility requirement for temporary resident status is that an applicant 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). Pursuant to the CSS/Newman Settlement Agreements, “until the date of filing” 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 failed to provide any information on his Form I-687 application to establish his continuous residence in the United States during this requisite period. Therefore, this application is of no value as probative evidence of his continuous residence in the United States during the requisite period.

The only supporting documentation the applicant submitted with his Form I-687 application is a copy of his birth certificate. While this document establishes the applicant's identity, it does not relate to his continuous residence in the United States during the requisite period.

On January 11, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In rebuttal to the NOID, the applicant submitted an unsigned statement. In this statement, the applicant asserts his eligibility for class membership under the Newman settlement agreement. The applicant notes that the documents offering proof of his residence have been either lost or destroyed. The applicant requests an extension to allow him to obtain credible affidavits from persons who can verify his and/or his parents' residence in the United States during the requisite period. Finally, the applicant explains the reasons he is admissible to the United States.

On September 15, 2006, the director issued a notice of denial to the applicant. In denying the application, the director determined that the applicant failed to provide any proof of his continuous unlawful residence in the United States during the requisite period. The director concluded that the applicant has not met his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that the director did not give sufficient weight to the documentary and testimonial evidence he submitted in support of his application. The applicant further asserts that the director should have taken into account the passage of time between the statutory period and the filing of his application. Finally, the applicant claims that he submitted a "plethora" of substantial evidence that was not analyzed in a fair and candid manner. It should be noted that the applicant's assertion that he provided the director with a plethora of documentary evidence is unfounded. Prior to filing his appeal, the applicant's file contained no documentary evidence of his residence in the United States during the requisite period.

The applicant furnished on appeal three affidavits from persons who claim to have knowledge of his residence in the United States at various points during the requisite period. The applicant submitted affidavits from [REDACTED] and [REDACTED]

The affidavit from [REDACTED] provides, "I have known [REDACTED] since 1985. I met him at his mother's house, [REDACTED] who resided in Newark, since then we became friends." The affidavit from [REDACTED] provides, [REDACTED] and I met in 1981 and established a relationship based on trust, honesty and mutual understanding of each other. Since then, we have maintained an excellent friendship and I've witnessed his development into a caring and very responsible person." Lastly, the affidavit from [REDACTED] provides, "[i]n 1987 I, [REDACTED] had the great pleasure of meeting [REDACTED] son of [REDACTED] which is a friend of mine, they are both great people and we've maintained a true friendship ever since."

The affidavits from [REDACTED] and [REDACTED] contain several apparent deficiencies. First, the affidavits fail to provide any relevant information on the beginning of the affiants' acquaintance with the applicant. Relevant information would include details on how and where the affiants first met the applicant. Second, the affidavits fail to provide any relevant information on the affiants' relationship with the applicant during the requisite period. Relevant information would include details on the type and frequency of contact the affiants had with the applicant during the requisite period. Third, there is no indication in these affidavits that the applicant was in the United States when he first met the affiants. Given these deficiencies, the affidavits are of minimal weight as probative evidence.

The affidavit from [REDACTED] contains similar deficiencies. The affiant attests that he first met the applicant in 1985 at the home of the applicant's mother in Newark. However, this statement does not offer any details on the circumstances of his first acquaintance with the applicant. Additionally, this affidavit fails to provide any relevant information on the affiant's relationship with the applicant during the requisite period. Relevant information would include details on the type and frequency of contact the affiant had with the applicant during the requisite period. Consequently, this affidavit does not establish the affiant's personal knowledge of the applicant's continuous residence in the United States during the requisite period. Given these deficiencies, this affidavit is also of minimal weight as probative evidence.

In conclusion, the absence of credible, reliable and probative documentation to corroborate the applicant's claim of continuous residence for the entire 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 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.