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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-246-11570

Office: DETROIT, MI

Date: **APR 30 2008**

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 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.

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, Detroit. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director stated that the applicant did not demonstrate that he was eligible to adjust status to that of a temporary resident because he failed to submit any evidence in support of his application. Therefore, the director found that the applicant did not meet his burden of proof and she denied his application.

On appeal, the applicant states that he submitted evidence for consideration that was received by that office on September 20, 2006. He argues that he requested that the director grant him additional time to gather evidence in support of his application.

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) 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) or the Service, on June 3, 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 addresses in the United States during the requisite period to be: [REDACTED] in Bronx, New York from 1981 until 1986; and [REDACTED] in Bronx, New York from 1987 until 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences before, during or after the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was not employed in the United States until 1998, when he became a vendor in Bronx, New York. It is noted here that the applicant was born in 1976, which indicates that the applicant was not employed in the United States until he was twenty-two (22) years old.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant failed to submit evidence that he resided in the United States for the requisite period apart from his own testimony.

In her Notice of Intent to Deny (NOID), issued June 9, 2006, the director stated that the applicant did not demonstrate that he was eligible to adjust status to that of a temporary resident. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

The record shows that on July 13, 2006 the applicant submitted a letter to the Service in which he stated that he did not yet have any additional evidence to submit in support of his application. However, he requested that the director grant him more time to submit additional evidence in support of his application.

In her decision issued September 13, 2006, the director noted that the applicant submitted a letter in which he stated that that he had no further evidence to submit in response to her NOID. Because the applicant failed to submit evidence in support of his application with the letter, she found that the applicant did not meet his burden of proof and she denied his application. It is noted that the director did not note that the applicant requested additional time to submit evidence in her notice of decision.

On appeal, the applicant asserts that the director did not respond to his request for additional time to submit evidence in support of his application. He refers to an additional letter and evidence that was received by the director on September 20, 2006 and received by [REDACTED]. The applicant states that he would like this evidence to be considered.

The record shows that the applicant did submit an additional letter and two other pieces of evidence were received by the Service on December 5, 2006. Details of this evidence is as follows:

- A letter in which the applicant states that he has not been able to obtain additional evidence in support of his application.
- An undated letter from [REDACTED] who indicates he is the Secretary of the Gambian Red Cross Society. In this letter, [REDACTED] asserts that the applicant was a victim of the 1981 Coup D'etat that occurred in the Gambia. He goes on to say that the applicant is therefore seeking refuge. Here, though there was a coup in the Gambia twenty-seven years ago, this letter is not relevant as proof that the applicant entered the United States in 1981 or resided in the United States before, during or after the requisite period. Therefore, this letter carries no weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated September 4, 2006 from the Gambia Fire and Ambulance Service that states that the applicant's parents were victims of a house fire on May 9, 2000. The letter goes on to say that property and documents were lost at that time. As with the letter from the Red

Cross, this letter does not offer proof that the applicant entered the United States before January 1, 1982 or that he ever resided in the United States. Therefore, this letter carries no weight in proving that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, though the director failed to respond to the applicant's request to grant him more time to submit evidence in support of his application, when this evidence is considered with other evidence in the record, the applicant continues to have failed to provide any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for his own testimony. The evidence the applicant submitted in support of his application is not relevant for this proceeding, as it does not offer proof of the applicant's residency in the United States during the requisite period.

In this case, the absence of any 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.