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U.S. Citizenship
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[REDACTED]

FILE:

MSC-06-081-10753

Office: ATLANTA

Date: AUG 20 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:

[REDACTED]

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, Atlanta. 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 denied the application because she found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements.

On appeal, counsel states that the evidence submitted by the applicant was sufficient to establish the applicant's eligibility for temporary resident status. Counsel also states that the director erroneously instructed the applicant to appeal the decision to the Administrative Appeals Office and that, instead, the director should have instructed the applicant to appeal to the Special Master.

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. See 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).

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 applicant 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.

It is noted that, on appeal, the applicant’s attorney mistakenly stated that the Administrative Appeals Office (AAO) does not have jurisdiction over this appeal, and that the director should have instructed the applicant to appeal to the Special Master. Pursuant to paragraph 8, page 5 of the CSS Settlement Agreement and paragraph 9, page 7 of the Newman Settlement Agreement, a denial of an application for class membership may be appealed to the Special Master. However, in this case, the director did not deny the application for class membership. Instead, the director denied the Form I-687 application on the merits. Because the Form I-687 application was denied on the merits, the AAO has jurisdiction over this appeal. *See* 8 C.F.R. §245a.2(p).

Thus, the only 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 applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 20, 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 first period of residence the applicant listed began in June of 1981. The first period of employment listed by the applicant, at part #33 of the Form I-687 application, also began in 1981.

The information provided by the applicant in the Form I-687 application conflicts with information provided by the applicant in a previously filed application. Specifically, the record contains Form I-589 Request for Asylum and a Form G-325A Biographic Information filed by the applicant on September 10, 1993. On the Form I-589 application the applicant indicated that he arrived in the United States in June of 1990. On the Form G-325 the applicant indicated that he had resided in India from December 1969 until May of 1990. These are material inconsistencies which seriously detract from the credibility of the applicant’s claim to have resided in the United States during the requisite period.

Even aside the inconsistent statements regarding his residence in the United States, the evidence submitted by the applicant fails to establish his eligibility for temporary resident status. The applicant submitted the following in support of his application:

- An affidavit from [REDACTED] dated September 7, 2006. The affiant states that she met the applicant on July 24, 1982. The affiant also claims to have spent “a lot of time” with the applicant at family functions and other occasions since first meeting him. The affiant fails to provide any details demonstrating personal knowledge of the applicant’s residence in the United States. Specifically, the affiant does not explain how she dates her initial acquaintance with the applicant, and does not provide details regarding the nature and frequency of her contact with the applicant during the requisite period. Because the affidavit is significantly lacking in probative detail, it will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- A statement from [REDACTED] which is notarized, but not dated. The declarant states that the applicant is his nephew. The declarant claims to have personal knowledge that the applicant was residing in the United States in 1981. The declarant states that, when the applicant entered the United States, the applicant came to live with him at C-4 [REDACTED]. This conflicts with the information provided by the applicant on his Form I-687 application. There, the applicant indicated that he resided at [REDACTED] from June 1981 until June 1985. Given this material inconsistency, this statement lacks credibility and will be given no weight as evidence of the applicant’s residence in the United States during the requisite period.

The record also contains a letter from [REDACTED] of the Board of Trustees of the Islamic Society of Georgia, Inc. The letter is dated February 15, 1984. It states that the applicant has been an active member of the congregation since June of 1981 and that the applicant has actively participated in religious functions. This letter fails to comply with the regulation for attestations by churches in that it fails to state the address where the applicant resided during the membership period and fails to establish how the author knows the applicant. 8 C.F.R. § 245a.2(d)(3)(v). Even absent compliance with the regulation, the letter is considered a “relevant document” under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M- 20 I&N Dec. at 81.* However, the letter lacks probative details such as the frequency of the applicant’s attendance at church services during the membership period. The letter therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

The record also contains a number of documents submitted by the applicant which fall outside the requisite period. These include a copy of a Social Security Statement showing the applicant’s earnings since 1991 and copies of Form W-2 Wage and Tax Statements from 1996 to 2002. As these documents are outside the requisite period they have no probative value with respect to the applicant’s residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 applicant's contradictory statements on the previous application and his reliance upon documents with little or no probative value, it is concluded that the applicant 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.