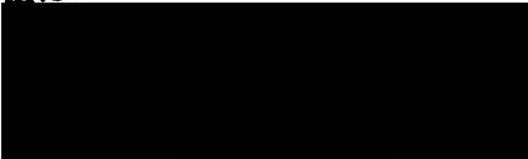


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invasion of personal privacy**



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FILE: [REDACTED] Office: NEW YORK Date: **AUG 21 2008**
MSC-05-255-10845

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, on June 12, 2005. 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. Specifically, the director noted that the applicant submitted no primary or secondary evidence of his initial entry into the United States, and that the affidavits offered to support his contention that he entered initially in 1981 were not credible. 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.

The applicant represents himself on the appeal of the denial of his application for temporary residence. The applicant asserts that he has “been residing in the United States since 1981”, that he provided “documentation to support the credibility of [his] application”, and that he should be granted “another opportunity to meet [the] requirements.”

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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 (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 he resided in the United States for the duration of the requisite period. In this case, the applicant has provided no credible, probative, and relevant evidence that he resided unlawfully in the United States for the requisite statutory period.

The AAO will first examine the information contained in the Application for Status as a Temporary Residence (Form I-687). The applicant states therein that he was born in Israel on April 6, 1968. The applicant also claims that he resided at [REDACTED], Fresh Meadow, NY, from October of 1981 to August of 1989. The AAO notes that the applicant was a child of 13 at the time of his alleged initial entry. The applicant does not provide any details of his arrival, how he traveled to the United States, or whether he was accompanied by any adult. The record contains no school records, or statement from any adult tasked with the responsibility to oversee the care and wellbeing of the applicant nor does the record contain any evidence to explain how he lived during this time.

In support of his application, the applicant submitted sworn statements from [REDACTED] and [REDACTED]. Ms. [REDACTED] claims to have first met the applicant in November, 1981, when both she and the applicant resided in the same neighborhood. Ms. [REDACTED] attests that she first met the applicant in September, 1983, as they were both employed by the same company. The AAO notes that both statements lack any details that would lend credibility to a relationship with the applicant. The declarants state that they “are very good friends” with the applicant, and that they “keep in touch.” Such descriptions are vague and nonspecific. The statements do not provide any factual detail describing under what circumstances they met the applicant, how they date their acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently they had contact with him. Given these deficiencies, both statements have minimal probative value in supporting the applicant's claim that he entered the United States in 1981.

The applicant also submitted a letter from SAS Management, Inc. signed by [REDACTED]. The letter states that the applicant and his family rented a house from the company in Fresh Meadows from March 1981 to May 2002. However, the New York State Department of Records indicates that the SAS Management company did not begin operations until 1993. Thus, the letter signed by Mr. [REDACTED] is of dubious probative value in establishing the commencement of the applicant's residency in the United States.

Furthermore, the evidence of record includes a number of documents indicating that the applicant was placed in deportation proceedings before the Executive Office for Immigration Review (EOIR). These proceedings include a motion for a change of venue submitted to EOIR on January 4, 1993. The applicant was represented by counsel during his proceedings before EOIR. The motion identifies the applicant as a native and citizen of Israel who initially entered the United States as a nonimmigrant visitor for pleasure on December 26, 1989, and who has resided continuously in this country since that time. The proceedings before EOIR also contain a sworn statement from the applicant stating that he entered the United States as a nonimmigrant visitor for pleasure on December 26, 1989, and conceding all allegations set forth in the Order to Show Cause (OSC) issued by the former INS on July 31, 1992. The OSC charges the applicant with having initially entered the United States on or about December 26, 1989, with a temporary visitor's visa, and having exceeded the authorized period of stay. Thus, the AAO concludes that the applicant's claim of entry prior to January of 1982 and residence in the United States for the requisite period of time is not only contradicted by his earlier sworn statement, but appears to be evidence of a fraudulent attempt to secure immigration benefits.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. As noted above, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 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.