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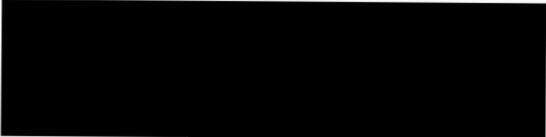
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: MSC-06-075-14696 Office: NATIONAL BENEFITS CENTER Date: JUL 03 2008

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. 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
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, on December 14, 2005 (together, the I-687 Application). 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 noting that the documentation submitted by the applicant was “insufficient to overcome the grounds for denial.” The director denied the application as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and evidence of the applicant’s residence in the United States. On the Form I-694, counsel states that at the time that the applicant filed his application, “some of the documents supporting his application were not available due to Hurricane Katrina.” On appeal, counsel submits affidavits and evidence of the applicant’s residence in the United States from “1993 until the present time.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 periods, 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on December 14, 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 listed his first and only address in the United States as [REDACTED] Richmond, Virginia, from 1993 to the present. At part #33, he listed his first and only employment in the United States as a self-employed vendor in Richmond, Virginia from 1993 to the present. At part #32, the applicant listed one absence from the United States as a family visit to Cameroon from "1987 to 1987."

The applicant has submitted four affidavits; a copy of the applicant's mortgage documents dated November 23, 1992; a copy of the applicant's sewerage and water board account history from August 25, 2005 to July 22, 2006; a copy of the applicant's metered gas billing history from October 15, 2004 to June 7, 2006; copies of the applicant's Internal Revenue Service reports for tax years 2000 to 2005; and a copy of the applicant's Delgado Community College transcript August 8, 2006. Some of the evidence submitted indicates that the applicant resided in the United States after the relevant time period. The following evidence relates to the requisite period:

- A copy of the applicant's Delgado Community College transcript August 8, 2006. This transcript lists the classes that the applicant took while enrolled at Delgado Community College, but it does not provide when the applicant attended those classes. Given these deficiencies, this transcript has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated August 10, 2006. The declarant states that he lives in Bellechase, Louisiana and states that he has known the applicant since 1982. The declarant states that the applicant "worked for [his] late father" as a "handy who did pressure wash" at his father's gas station. The declarant also states that the applicant sometime worked in his house. The declarant adds that the applicant "worked for [his] father for eight years" and "has become a family friend." Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. The affidavit lacks details demonstrating contact and interaction with the applicant and knowledge of the applicant's residence during the period addressed by the affiant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated August 10, 2006. The declarant states that he lives in New Orleans, Louisiana and states that he has known the applicant since 1982. The declarant states that the applicant “rented [his] house with another person” from 1982 to 1988. The declarant also states that “since then [he and the applicant] never lost contact.” The declarant adds that his children “used to teach him English.” Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. Like all the witness submissions on this application, this affidavit lacks detailed information from the asserted contacts with the applicant that would be indicative of those contacts. Furthermore, although the declarant states that he rented a house to the applicant, he does not provide the address where the applicant lived. The AAO notes that the applicant does not provide an address in Louisiana from 1982 to 1988 in the Form I-687. As stated previously, the Form I-687 lists one address for the applicant from 1993 to the present. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated February 8, 2006. The declarant states that he lives in Richmond, Virginia and states that the applicant “came to this country in September of 1986.” As stated above, an applicant for temporary resident status must establish entry into the United States before January 1, 1982. This statement indicates that the applicant is not eligible for the benefit sought. The declarant states that he lived with the applicant in New Orleans until 1990 when he moved to another state. The declarant also states that “during that time, [the applicant] remained in New Orleans and [the declarant] supported him while [the applicant] attended various colleges there.” The declarant adds that the applicant “never left the city until the Katrina disaster.” Although the declarant states that he has known the applicant since 1986, the statement does not supply enough details to lend credibility to an at least 20-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1986, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. Furthermore, although the declarant states that he and the applicant lived together in New Orleans, he does not provide the address where he lived with the applicant. The AAO notes that the applicant does not provide an address in Louisiana in the Form I-687. Given these aspects, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated February 2, 2006. The declarant states that she lives in New Orleans, Louisiana and states that she has known the applicant “since September 1986.” The declarant states that the applicant has lived in

“New Orleans, Louisiana at [REDACTED].” The declarant also states that she has “been in constant contact [with the applicant] since [she] met him in 1986.” Although the declarant states that she has known the applicant since 1986, the statement does not supply enough details to lend credibility to an at least 20-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1986, how she dates his initial acquaintance with the applicant in the United States, or how frequently she had contact with the applicant. The affidavit does not contain details generated by the asserted “constant contact” that would corroborate that the declarant had the asserted contact with the applicant. The AAO notes that the applicant does not provide an address in Louisiana in the Form I-687. As stated previously, the Form I-687 lists one address for the applicant from 1993 to the present. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The director denied the application for temporary residence on July 20, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel states that at the time that the applicant filed his application, “some of the documents supporting his application were not available due to Hurricane Katrina.” On appeal, counsel submits affidavits and evidence of the applicant’s residence in the United States from “1993 until the present time.” The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. As noted above, to meet his burden of proof, the applicant must provide credible and probative evidence of eligibility apart from his own testimony. *See* 8 C.F.R. § 245a. The AAO notes that the affidavit from [REDACTED], M.D. specifically states that the applicant entered the United States in September 1986. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient 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.