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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 186 12436

Office: NEW YORK Date:

JUL 10 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, 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. The director determined that the applicant had not established by a preponderance of the evidence that he was statutorily eligible to file for the benefit herein sought as he had not established that he 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 he first arrived in the United States in 1981, briefly traveled to his country in 1996, and then returned to the United States. The applicant acknowledged, on appeal, that he signed a sworn statement at his legalization interview. He states, on appeal, that he can neither read nor write, and that he did not understand the contents of the statement that he signed. The record indicates that the applicant signed a sworn statement on November 30, 2005 indicating that he first entered the United States on a visitor's visa on April 22, 1996. The record further indicates that the legalization interview was conducted with an interpreter, and that the interpreter witnessed the statement signed by the applicant. The applicant asks that he be given another opportunity to prove his case, but checked a block on the Form I-694 indicating that he waives the right to submit a written brief or statement. The applicant did not submit additional evidence on appeal.

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 245(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).

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.

The Form I-687 submitted by the applicant states that the applicant resided in the United States from 1981 through the date that the Form I-687 was filed (April 4, 2005). It further provides that the applicant was absent from the United States from January of 1996 until March of 1996 for a family visit, and that the applicant was first employed (self-employed) in the United States in 1981.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he is eligible for the benefit sought, and that he has demonstrated that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavit

- The applicant submitted a single sworn affidavit from [REDACTED]. Mr. [REDACTED] states that he knows and is acquainted with the applicant, and that he has personal knowledge that the

applicant has resided in New York, City from September of 1994 until September of 2005. The affiant indicates that he knew the applicant as a merchant in the Harlem Market. The affiant provided no additional information.

Applicant's Sworn Statement

- The applicant submitted a sworn statement to a United States immigration officer on November 30, 2005. The statement was made with the assistance of a Fulani interpreter, [REDACTED], who signed the statement as a witness. In that statement the applicant states as follows:

My true and correct name is [REDACTED]. I was born on 07/02/1963 in Guinea.

I entered the United States for the first time on April 22, 1996 with a B2 visa through JFK airport.

I have never been in the United States before 4/22/1996.

The notes taken by the immigration officer at the applicant's November 30, 2005 interview are consistent with the contents of the applicant's sworn statement.

The applicant has submitted a sworn affidavit from a personal witness who states that he knows the applicant was present in the United States from 1994 – 2005. The applicant stated under oath, with the assistance of an interpreter, that he first arrived in the United States on April 22, 2006. These documents are inconsistent, and neither cover time periods within the requisite period for the immigration benefit sought in this proceeding. Further, the information provided in the witness affidavit and in the applicant's sworn statement is in conflict with the information provided by the applicant on his Form I-687, wherein he states that he resided in the United States from 1981 through the date of his legalization application submitted on April 4, 2005. The applicant has not provided a reasonable explanation for these inconsistencies, stating only that he is uneducated and misunderstood the information provided. It is noted that the sworn statement made to the United States immigration officer on November 30, 2005 was made with the assistance of an interpreter who interpreted the proceeding in the applicant's native language. The contradictory information is material to the substance of the applicant's claim in that it directly bears on whether he qualifies for the immigration benefit sought. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has provided no additional evidence in support of his legalization application. The applicant has not provided any evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The single affidavit provided by the applicant did not cover any period of time within the requisite period for the benefit sought. Further, the affiant failed to provide detailed evidence establishing how he knew the applicant, the details of his association or relationship, or detailed accounts of his ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative and relative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. The applicant has not provided any supporting documentation of his presence in the United States during the requisite period such as medical records; school records; real estate/lease documentation; telephone bills; dated purchase receipts; or bank statements. The absence of sufficiently detailed 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. § 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. For this additional reason, the affidavit submitted by the applicant would have little probative value.

Therefore, based upon the foregoing, 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.