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U.S. Citizenship
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Services

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FILE:

MSC-05-090-10115

Office: NEW YORK

Date:

JUL 11 2008

IN RE:

Applicant:

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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods. The director noted that affidavits submitted by the applicant were not sufficiently credible to satisfy the applicant's burden of proof.

The applicant has submitted one additional affidavit on appeal, and a brief.

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).

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. Cardoza-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 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 to Citizenship and Immigration Services (CIS) on December 29, 2004. At part #30 of the application, where applicants were asked to list all residences in the United States, the first period of residence listed by the applicant began in October of 1981. The applicant was interviewed by an immigration officer in connection with this application on June 14, 2006. At the interview the applicant testified that he first entered the United States in October of 1981. As evidence of his entry into the United States, the applicant submitted an affidavit from Musafir Travel which states that the applicant purchased an airline ticket for travel to the United States on October 25, 1981. A copy of the ticket was attached to the affidavit. Although, in the Notice of Intent to Deny (NOID), the director stated that some dates on the copy are illegible this does not appear to be the case. The date of issue listed on the tickets is September 23, 1981. It appears that the applicant was scheduled to travel from Dacca to Dubai on October 5, from Dubai to Paris on October 6 and from Paris to New York on October 6. The applicant was scheduled to return to Paris on January 13.

Although the applicant has established that he purchased a round trip ticket for travel to the United States in October 1981, this is not enough to show eligibility for temporary resident status. The applicant must also show by a preponderance of the evidence that he resided continuously in the United States throughout the requisite period. To support his claim of continuous residence, the applicant submitted the following evidence:

- Affidavit of [REDACTED] affidavit signed and notarized on March 15, 2006. The affiant states that he first met the applicant on November 7, 1981. The affiant does not indicate how he met the applicant, nor does he describe his relationship with the applicant in any detail. The affidavit lacks details that would lend credibility to the affidavit. In addition, the affiant states that when he first met the applicant in 1981, the applicant told him that he had been in the United States for over three years. The applicant stated on the I-687 application and in his interview that he arrived in the United States in October 1981. This is a material inconsistency which detracts from the credibility of the affidavit. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED] signed and dated on December 2, 2004. The statement lacks details of the declarant's relationship with the applicant such as how the declarant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This statement therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Letter from [REDACTED] of Minarava Construction, signed and dated December 5, 2004. This letter states that the applicant was employed by Minarava Construction from 1981 to 1983. This letter does not comply with the regulations relating to past employment records. Specifically, the letter does not provide the applicant's address at the time of employment, does not provide the exact period of employment, does not list the applicant's duties with the company, and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). 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 any details that would lend credibility to the letter. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on November 20, 2004. The affiant does not claim to have knowledge of the applicant's residence during the requisite period. Further, the affidavit lacks details of the affiant's relationship with the applicant such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED] signed and dated November 25, 2004. The declarant states that he has known the applicant since 1979 and that he accompanied the applicant to the airport in 1981 when the applicant was traveling to the United States. The declarant states that he arrived in the United States in 1992 and located and contacted the applicant at that time. The declaration lacks details of the declarant's relationship with the applicant such as how the declarant dates his initial acquaintance with the applicant or the nature and frequency of his

contact with the applicant. This declaration therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a number of documents that fall outside the requisite period including:

- 2005 federal income tax return;
- 2005 W-2 and Earning Summary;
- Letter from [REDACTED] of Bay Ridge Convenience stating that the applicant has been employed by Bay Ridge Convenience since April 2004;
- A letter from [REDACTED] of Delicious Deli stating that the applicant was employed at Delicious Deli from September 1993 until January 2001.

These documents are not probative of whether the applicant was continuously resident and/or physically present throughout the requisite periods.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The evidence submitted by the applicant does not establish, by a preponderance of the evidence, that he resided continuously and was physically present in the United States throughout the requisite periods. Although the letter from Musafir Travel and accompanying copies of the airline tickets may show entry into the United States prior to January 1, 1982, they do not prove residence or physical presence throughout the requisite periods. The affidavits submitted by the applicant are insufficient to establish that the applicant resided continuously in the United States throughout the requisite period. None of the affiants indicated how they dated their acquaintance with the applicant, how they met the applicant or how frequently they saw the applicant. 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. § 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 reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period. 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.