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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
MSC-05-305-11204

Office: NEW YORK

Date: JUL 22 2008

IN RE: Applicant: [Redacted]

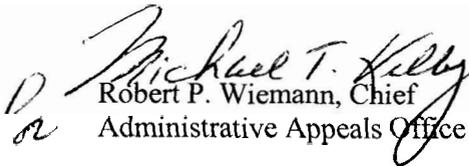
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, on August 1, 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 information and documents that the applicant submitted were “insufficient to overcome the grounds for denial.” In addition, the director stated that the letter from [REDACTED] was of “dubious veracity.” 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, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a written brief or statement. On the Form I-694, the applicant addressed the director’s concerns regarding the letter provided by [REDACTED]. The applicant stated that “although the document [was] not notarized,” the letter was a genuine document. The applicant also states that he “entered the United States prior to January 1, 1982 and stayed unlawfully during the statutory period.” Finally, the applicant states that the “due passage of time and the attendant difficulties” of providing documents of unlawful residency should be taken into consideration.” 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)(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 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 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 August 1, 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 address in the United States as [REDACTED] New York, New York, from November 1981 to December 1985. At part #33, he listed his first employment in the United States as a self-employed book vender in New York, New York, from December 1985 to December 1993. At part #32, the applicant listed two absences from the United States. The applicant states that he visited Canada from May 1987 to May 1987 and Ghana from December 1990 to January 1991.

The applicant has provided two notarized affidavits, a letter, and a copy of the applicant's passport issued August 28, 2000 in Accra. The applicant's passport is evidence of the applicant's identity, but it does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The following evidence relates to the requisite period:

A notarized letter dated January 2, 2007 from [REDACTED] on @mterdam Hospitality letterhead. The record of proceeding also contains an unnotarized letter from Mr. [REDACTED] dated November 2, 2006 on Parkview Hotel letterhead. Both letters provide the same information. The declarant states that according to some records, "[REDACTED] was a tenant" at a small hotel "called the Parkview [from] the period [of] 1981 – 1989." The declarant also states that the applicant, Mr. [REDACTED] s nephew, resided with Mr. [REDACTED] "for most of his tenancy." The letters state that the Parkview Hotel was located at [REDACTED] New York, New York. The declarant states that the applicant has resided in the United States from December 1981 to the present. Although the declarant states that [REDACTED] lived at the Parkview Hotel from 1981 to 1989, he only states that the applicant lived with [REDACTED] "for most of his residency" and does not provide actual dates for the applicant's residence at the Parkview Hotel. In addition, the declarant does not describe which records he consulted for the information provided in the letter or whether those records included any information about the applicant's residence at the Parkview Hotel. Furthermore, the AAO notes that the applicant did not include this address in the Form I-687. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this statement 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 December 1, 2005. This affiant states that she lives in New York, New York and has known the applicant since December 1981. The affiant states that she first met the applicant at “an end of year African party” and that she has “maintained a fairly good relationship with him since that time.” Although Ms. [REDACTED] states that she has known the applicant since 1981 “in this country,” her statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. Ms. [REDACTED] affidavit does not contain information generated by her asserted relationship with the applicant that would demonstrate the extent of the relationship and that it provided Ms. [REDACTED] sufficient basis of knowledge of the applicant’s residence in the requisite period. Further, Ms. [REDACTED] statement does not provide specific information about the applicant’s residence through the requisite period. Given these deficiencies, this statement 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 remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States in 1981, when he was fifteen years old. In a sworn statement dated May 25, 2006, the applicant claims that entered the United States with his uncle and was inspected in New York. The applicant also stated that he has never applied for or received a United States visa. The applicant does not provide an explanation as to how he was admitted into the United States without a visa. The applicant has not submitted any evidence of his initial entry into the United States such as a passport issued prior to his date of entry, a Form I-94, or ticket stubs. 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 evidence of eligibility apart from his own testimony. In this case, his assertions regarding his eligibility for the benefits for which he is applying are not supported by credible and probative evidence in the record.

The director issued a notice of intent to deny (NOID) on November 15, 2005 and on October 16, 2006. In her October 16, 2006 NOID, the director noted that the applicant was fifteen years old in 1981 and that the applicant did not “provide credible affidavits of any adult responsible for [his] care and financial support.” There is no evidence in the record of proceeding that the applicant addressed the director’s concerns regarding his care and financial support as a minor during the requisite period.

The director denied the application for temporary residence on December 13, 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 and that he met the necessary residency or continuous physical presence requirements. In addition, the director stated that the letter from [REDACTED] was of “dubious veracity.” Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant addressed the director's concerns regarding the letter provided by [REDACTED]. The applicant stated that "although the document [was] not notarized," the letter was a genuine document. The applicant also states that he "entered the United States prior to January 1, 1982 and stayed unlawfully during the statutory period." Finally, the applicant states that the "due passage of time and the attendant difficulties" of providing documents of unlawful residency should be taken into consideration." 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 evidence 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.