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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
MSC-04-307-11044

Office: NEW YORK

Date: **JUL 24 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.

*for*  
*Michael T. Kelly*  
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 2, 2004 (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 discrepancies between the applicant's Form I-687 and statements during his interview. 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 a written statement. The applicant states that he has lived in the United States since 1981 and that he knows the names of his former roommates but does not know their current whereabouts. The applicant also states that USCIS "must take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence, and consider seriously the affidavits I submitted which are genuine and confirm my claim." The applicant requests that his application be approved on humanitarian grounds. 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 August 2, 2004. 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 January 1982 to January 1990. At part #33, he listed his first and only employment in the United States as a self-employed vendor in New York, New York from April 1982 to the present. At part #32, the applicant did not list any absences from the United States. At part #31, the applicant did not list any affiliations or associations.

The applicant has submitted three notarized letters and a copy of the applicant's passport issued on July 2, 2004 which contains a entry stamp dated July 13, 2004. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the following witness statements in support of the application:

- A notarized letter from [REDACTED] dated November 3, 2006. The declarant states that she lives at [REDACTED] and that she has known the applicant since 1981. The declarant also states she can "vouch [for] his residence in [the] U.S.A. from 1981 - 1988." The declarant adds that she and the applicant "still keep in touch." Although the declarant states that she has known the applicant since September 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant in the United States, how frequently she had contact with the applicant, or where in the United States the applicant has been residing. 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 letter from [REDACTED] dated August 8, 2004. The declarant indicates that he lives in New York, New York and that he has known the applicant since 1984. The declarant also states he and the applicant "have been selling together as street vendors." Although the declarant states that he has known the applicant since September 1984, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. For instance, the declarant does not indicate how he met the applicant, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. In addition, the declarant does not state when he began working with the applicant or what they sell. 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 letter from [REDACTED] dated July 14, 2005. The declarant states that he lives in the Bronx, New York and that he has known the applicant since 1981. Although the declarant states that she has known the applicant since September 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the declarant does not indicate how he met the applicant, how he dates his initial acquaintance with the applicant in the United States, how frequently he had contact with the applicant, or what he knows about where the applicant has been residing. 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 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. 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.

The director issued a notice of intent to deny (NOID) on July 26, 2005. The director noted discrepancies between the applicant's testimony and the record of proceeding. In response to the director's NOID, counsel stated that the applicant lived at [REDACTED] since "late 1981" and that although the applicant knows the names of the people that he lived with, he does not know where they currently live. The director denied the application for temporary residence on August 11, 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, the applicant states that he has lived in the United States since 1981 and that he knows the names of his former roommates but does not know their current whereabouts. However, the applicant does not include the names of his former roommates. The applicant also states that USCIS "must take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence, and consider seriously the affidavits I submitted which are genuine and confirm my claim." The passage of time has been taken into consideration and as noted above, 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. 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.