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**U.S. Citizenship
and Immigration
Services**

L1

FILE:

MSC-05-271-13806

Office: NEWARK

Date: JUL 25 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. 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.

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, Newark. 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 June 28, 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 applicant “failed to submit additional evidence for consideration” in response to the director’s March 24, 2006 notice of intent to deny. 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 stated that his written brief or statement was attached. On the Form I-687, counsel states that “due weight was not accorded the witness affidavits which testify to [the applicant’s] presence in the United States since before January 1, 1982.” There is no brief or statement from counsel in the record of proceeding. On July 1, 2008, the AAO sent counsel a facsimile regarding the absence of the aforesaid appellate material. As of this date, the AAO has not received a brief or any additional evidence from counsel or 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 June 28, 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 ██████████ Newark, New Jersey, from October 1981 to January 2000. At part #33, he listed his first employment in the United States as a self-employed private duty caregiver in Newark, New Jersey from June 1988 to the May 1998. At part #32, the applicant listed one absence from the United States. The applicant visited Canada from September 1987 to September 1987. At part #31, the applicant did not list any affiliations or associations.

The applicant has submitted three affidavits; a copy of the applicant's birth certificate; a copy of the applicant's passport issued on June 6, 2005 in Washington, D.C.; and a copy of the applicant's Internal Revenue Service (IRS) Forms W-2 and 1040 for 2003 and 2004. The applicant's birth certificate and passport are evidence of the applicant's identity, but do 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 form-letter affidavit from ██████████ dated February 11, 2006. The declarant states that he lives in New York City, New York and that the applicant is personally known to him as the applicant is a "family friend." The declarant provides two addresses for the applicant that are consistent with the applicant's Form I-687. However, the applicant does not state how he learned that the applicant lived at those addresses. Although the declarant indicates that he has known the applicant since 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 he met the applicant, how he dates the applicant's first address or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Witness" from ██████████ dated December 23, 2005. The declarant states that he lives in Shrewsbury, Massachusetts and that he has known the applicant "since 1981." The declarant provides two addresses for the applicant that are consistent with the applicant's Form I-687. However, the applicant does not state how he learned that the applicant lived at those addresses. Although the declarant indicates that he has known the applicant since 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 the applicant's first address or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's

claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

A notarized form-letter "Affidavit of Witness" from [REDACTED]. The affidavit is not dated. The declarant states that he lives in Worcester, Massachusetts and that he has known the applicant "since 1981" at the Emmanuel Baptist Church in Worcester, Massachusetts. The declarant states that he first met the applicant "when [the applicant] was part of the youth program at the church." The declarant adds that he kept in contact with the applicant after the applicant's parents left in 1997 because he was a close friend of the applicant's father. The declarant provides two addresses for the applicant that are consistent with the applicant's Form I-687. However, the applicant does not state how he learned that the applicant lived at those addresses. Although the declarant indicates that he has known the applicant since 1981, 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 why the applicant, who claims to have lived in New Jersey during the requisite period, attended a church in Massachusetts, how he dates the first time that he met the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements, in which he claims to have entered the United States in 1981, when he was 11 years old, and to have resided for the duration of the requisite period in New Jersey. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on March 24, 2006. The director denied the application for temporary residence on August 15, 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 "due weight was not accorded the witness affidavits which testify to [the applicant's] presence in the United States since before January 1, 1982." Neither counsel nor the applicant have 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, 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.