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U.S. Citizenship  
and Immigration  
Services

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FILE: MSC-05-238-12209

Office: HONOLULU

Date: JUL 28 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:

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, Honolulu. 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 May 26, 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 did not provide detailed information about his or his mother's life in the United States during the requisite period. 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 statement. On appeal, the applicant stated that he has "provided all required documents in order to overcome the grounds of denial." The applicant stated that he provided a notarized affidavit from his mother, a list of employers, and a passport. The applicant also stated that he did not provide specific names of people who knew him because he "would not be able to give accurate phone numbers and addresses of all [his] acquaintances 20 years ago." Finally, the applicant states that because he was 12 years old at the time, he does not know how much money his mother made selling t-shirts. 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 applicant has provided a notarized declaration; a letter; a copy of the applicant's birth certificate; the applicant's passport issued on October 30, 1995 and renewed on June 27, 2001; a copy of the applicant's Social Security Administration statement dated April 24, 2006 indicating that the applicant paid social security taxes from 1991 to 2005; a list of the applicant's employers; and copies of the applicant's 2004 and 2005 income tax returns. 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. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite time period. The record of proceedings contains the following statements from witnesses in support of the application:

- A notarized form-letter declaration from [REDACTED] the applicant's mother, dated August 9, 2006. The declarant states that she lives in [REDACTED]. The declarant states that she brought her son to the United States in 1981, when he was 12 years old, through Canada. The declarant also states that she and the applicant lived at the Mansfield Hall Hotel until 1988 and that she was a self-employed hair braider and t-shirt seller. The declarant states that she "could not afford to send [the applicant] to school" because she "needed somebody to help [her] sell t-shirts." Finally, the declarant states that she decided to return to Senegal in 1988 due to "fear of being deported." Although the declarant states that she and the applicant lived in New York from 1981 to 1988 and provides some information consistent with the Form I-687, her statement does not supply enough details to make it probative. The declarant does not provide information generated by her asserted living with the applicant that would demonstrate the length of that association and corroborate that she and the applicant in fact lived together in the United States from 1981 to 1988, as asserted. Accordingly, this statement has minimal evidentiary 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 letter on Hotel Mansfield Hall letterhead signed by [REDACTED] manager and dated February 13, 1988. The declarant states that [REDACTED] lived at the Mansfield Hall Hotel from November 1981 to the present. Although the declarant states that the applicant's mother lived at the hotel from November 1981 to 1988, the declarant does not **indicate the source of his information regarding [REDACTED] stay at the hotel.** Furthermore, the letter does not state that the applicant also lived at the hotel. Accordingly, the 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 by bus on "November 11, 1981 at about 8:30 p.m." Although the applicant provides a specific time and date for his entry, he does not indicate how he remembers his entry into the United States with such specificity. The applicant claims that he and his mother left the United States in 1988 because they were unable

to obtain legal status and feared deportation. The applicant also states that he returned to the United States in June 1991 with an F-1 visa. The applicant claims to have lost his passport. 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 28, 2006. The director denied the application for temporary residence on November 6, 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. The director specifically noted that the applicant did not provide detailed information about his or his mother's life in the United States during the requisite period. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant stated that he has "provided all required documents in order to overcome the grounds of denial." The applicant stated that he provided a notarized affidavit from his mother, a list of employers, and a passport. The list of employers provided does not include any dates of employment, addresses or contact information. The applicant also stated that he did not provide specific names of people who knew him because he "would not be able to give accurate phone numbers and addresses of all [his] acquaintances 20 years ago." Finally, the applicant states that because he was 12 years old at the time, he does not know how much money his mother made selling t-shirts. The AAO notes that the applicant's statement on appeal is inconsistent with a sworn statement in the record of proceeding. In his sworn statement, the applicant stated that his mother made a lot of money selling t-shirts, "about \$1,000 a day."

As mentioned 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 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.