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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: JUN 0 9 2008
MSC-06-033-23168

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. 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.

On appeal, the applicant has submitted affidavits from two additional witnesses.

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. Cardozo-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 and Supplement to Citizenship and Immigration Services (CIS) on October 31, 2005. The applicant submitted the following in support of his application:

- Notarized letter from , signed and dated December 8, 2005. The author states that she has known the applicant since before 1982. The affidavit does not indicate how the affiant met the applicant, nor does it describe her relationship with the applicant in any detail. The affidavit lacks details that would lend credibility to the affidavit. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit of (also spelled , signed and notarized on October 21, 2005. The affiant states that he has known the applicant since "before December 31st 1981 in New York." 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.

- Affidavit of signed and notarized November 3, 2006. Presumably, this is the same person as the affiant listed above. Although there is a slight difference in the spelling of the first name, the address on both affidavits is the same. Here the affiant states that he has known the applicant since 1981, and that they live in the same building. 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.

- Affidavit of , signed and notarized on November 2, 2006. The affiant states that he has known the applicant since 1981, and that they used to live in the same building. 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.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.