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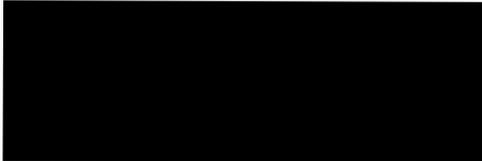
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CINCINNATI Date: JUN 12 2008
MSC-05-127-11036

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.

Michael T. Kelly
for 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, Cincinnati. 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 February 4, 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 one of the affidavits submitted by the applicant “appear[ed] to be fraudulent.” 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 the “dates on the affidavits that [he] submitted are historically wrong” and adds that “some mistakes [were] made during the preparation of these affidavits.” The applicant also states that “had [he] known [that] there was something wrong with the accuracy of the affidavits, [he] would have preferred [to] not provide any proof at all.” The applicant did not submit any other evidence on appeal. 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. 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. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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 February 4, 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 1981 to 1987. At part #33, he listed his first employment in the United States as a self-employed vendor in New York, New York, from 1981 to present. At part #32, the applicant did not list absences from the United States during the relevant time period.

The applicant has provided two affidavits; a copy of the applicant's social security card; a copy of the applicant's Ohio driver's license issued on March 20, 2006; a copy of the applicant's employment authorization document issued on March 14, 2006; a copy of the applicant's passport with March 10, 2001 and June 13, 2004 entry date stamps; a copy of the applicant's visitor's visa issued on January 9, 2001 in Dakar; a copy of the applicant's pay stubs dated October 6, 2005, October 13, 2005, February 24, 2006, and March 3, 2006. The applicant's social security card, Ohio driver's license, employment authorization card, and passport are evidence of the applicant's identity, but do not demonstrate that he entered before 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 his entry with visitor's visa on June 13, 2004 and is not probative of residence before that date. The following evidence relates to the requisite period:

- A notarized "Affidavit of Residence" from [REDACTED] dated June 15, 2005. The declarant states that the applicant lived at the [REDACTED] at [REDACTED] New York, New York 10019 from "September 1987 to May 1992." The declarant adds that the applicant lived "in room [REDACTED] with another friend of his from the same country." This affidavit was specifically mentioned by the director in the notice of intent to deny (NOID) and in the director's decision. In the NOID, the director states that the information provided in this affidavit is inconsistent with the fact that the [REDACTED] ceased to exist on or about 1987. In his response to the director's NOID, the applicant submitted a statement in which he explained that "the two affidavits that [he] submitted [were] handwritten by the affiants" and that a mistake was made on the dates when the affidavits were typed. The applicant also states that "they didn't notice the change of date of residence." The applicant adds that the correct dates were listed on the application and states that he lived at the [REDACTED] from 1981 to 1987 and at [REDACTED] from 1987 to 1992. The dates provided in the applicant's response to the NOID are the same as those listed in the applicant's Form I-687. Although the applicant provides an explanation for the mistake in the affidavit, but he does not provide a revised affidavit from [REDACTED] or other evidence of his residence at the [REDACTED]. Doubt cast on any aspect of the petitioner's proof may, of course, 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 petitioner 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 affidavit has no 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 June 15, 2005. The declarant states that he lives in Bronx, New York and that he “lived in the same apartment building [as the applicant] from March of 1981 to December of 1987.” As stated above, in the applicant’s response to the NOID, he explained that the dates on the affidavits were incorrect and provided dates consistent with the Form I-687. Again, although the **applicant provides** an explanation for the mistake, he does not provide a revised affidavit or other evidence of his residence on [REDACTED]. Doubt cast on any aspect of the petitioner's proof may, of course, 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 petitioner 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). In addition, the declarant does not supply enough details to lend credibility to a more than 18-year relationship, according to the dates provided by the applicant on the Form I-687, with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1987, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. The affidavit lacks specific and verifiable details that are extensive enough to demonstrate the asserted contact with the applicant. Furthermore, although not required, there is no evidence in the record of proceeding that the declarant resided in the United States during 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 February 1981 “without a visa.” The record of proceeding contains no evidence of the applicant’s entry into the United States other than on March 10, 2001 and June 13, 2004 with a visitor’s visa. 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on August 16, 2005. The director denied the application for temporary residence on August 18, 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 noted that the applicant did not address the deficiencies noted in the director's notice of intent to deny. 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 the "dates on the affidavits that [he] submitted are historically wrong" and adds that "some mistakes [were] made during the preparation of these affidavits." The applicant also states that "had [he] known [that] there was something wrong with the accuracy of the affidavits, [he] would have preferred [to] not provide any proof at all." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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.

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