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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date:

MSC 05 064 10054

JUN 26 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.

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, 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) on December 3, 2004. The applicant was interviewed on June 30, 2005. The director issued a Notice of Intent to Deny (NOID) the application on July 1, 2005. The director denied the application on September 29, 2006.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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).

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.

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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application. On the Form I-687, the applicant indicates he first entered the United States in October 1981 and last entered the United States on October 13, 2000. The applicant's date of birth is shown as November 19, 1971. The applicant lists his addresses for the pertinent time period as: [REDACTED], Bronx, New York from October 1981 to May 1988; and [REDACTED], Bronx, New York from May 1988 to November 1992. The applicant indicates he was not employed from October 1981 to June 1986 and was self-employed as a vendor in Bronx, New York from June 1986 to February 1991. The applicant lists the only absence from the United States since his entry as June 1997 to October 2000.

The record contains a portion of the applicant's passport – number [REDACTED] issued on September 8, 2000 in Mali. The passport confirms the applicant's date of birth as November 19, 1971 and contains a copy of a U.S. visa issued in Bamako, Mali on September 20, 2000 and identifies the applicant as a member of Wakafu Handcraft Group, Mali Delegation to participate in the U.S. Africa Business Forum in Detroit, Michigan in September 2000. The passport also contains a U.S. entry stamp for October 2000.

The applicant has executed and submitted three sworn statements regarding his residence in the United States:

1. An affidavit dated June 24, 2005 wherein the applicant declares: that he first came to the United States in October 1981 with his uncle; that he traveled to Toronto, Canada, illegally in January 1987 to see his friend; returned to the United States in March 1987; that his uncle, Foday Tambadou, accompanied him to apply for amnesty in March 1988; and that his application was not accepted.

2. An affidavit dated November 29, 2004 wherein the applicant declares: that he first entered the United States as a nonimmigrant with his uncle in October 1981; that his authorized stay in the United States expired before January 1, 1982; that he visited an INS office in New York City in March 1988 and expressed a wish to apply for the 1986 amnesty, but was turned away by an INS official.
3. An affidavit dated November 29, 2004 wherein the applicant declares: that he currently works at the "Original Car Wash;" that he was self-employed as a street vendor June 1986 to February 1991; and that he was unemployed from October 1981 to May 1988 and he was getting support from his uncle during this time period.

The applicant also provided three additional affidavits from other individuals:

- An affidavit dated November 29, 2004 from [REDACTED] who declares that he has known the applicant in the United States since 1988 and that he accompanied the applicant to an INS office in New York City in March 1988 where the applicant expressed a wish to apply for the 1986 amnesty program, but was turned away by an INS official.
- An affidavit dated November 29, 2004 from [REDACTED] who declares that he has known the applicant in the United States since 1986.
- An affidavit dated November 29, 2004 from [REDACTED] who declares that he has known the applicant in the United States since 1986 and that the applicant resided with the affiant at [REDACTED] from May 1988 to November 1992.

The record also includes an undated letter from the president of Grapa Car Wash stating that the applicant is an employee. The letter does not include the start date of the applicant's employment.

The director denied the application on September 29, 2006. The director determined that the applicant had not provided credible affidavits or other documents that established that the applicant resided in the United States on or prior to January 1, 1982.

On appeal, the applicant states that he has submitted credible and convincing evidence of his presence and continuous residence in the United States during the statutory period and that it was the interviewing officer who erred when finding the applicant's testimony and evidence not credible.

The AAO does not find the applicant's appeal persuasive. The AAO has reviewed the documentation in the file and finds no documentary evidence of the applicant's entrance into the United States prior to January 1, 1982 and continuous unlawful presence in the United States for the requisite time period. The record contains the two affidavits submitted, covering the limited time period since 1986. These two affidavits do not establish the applicant's entrance into and continuous unlawful residence in the United States since prior to January 1, 1982. Moreover, neither of the affiants provides sufficient details of the events and circumstances describing how they met the applicant in the United States or establish that they were in the United States during the requisite time period or provide sufficient details of the interactions with the applicant. The AAO does not find these affidavits credible. The AAO has also reviewed the

affidavit of [REDACTED] who declares that he has known the applicant in the United States since 1988. The AAO notes that the applicant describes this individual as his uncle. Mr. [REDACTED] fails to provide information or evidence regarding the applicant's entrance and continuous residence in the United States for the requisite time period. Thus, this affidavit is not probative. The AAO finds the absence of detail surrounding the circumstances of the affiants' relationship with the applicant detracts from the probative value of the affidavits.

These three deficient affidavits and the applicant's sworn statements comprise the only evidence in the file regarding the applicant's entrance into the United States prior to January 1, 1982 and unlawful residence in the United States for the requisite time period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 and the applicant's reliance upon deficient affidavits, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.