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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: [REDACTED]

Office: NEW YORK

Date: JUN 27 2008

MSC 05 193 30536

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 PETITIONER:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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. The director denied the application, finding that 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 asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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 she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits

- The applicant submitted the following sworn affidavits in support of his application. All affidavits appear on a preprinted form.

states in his sworn affidavit that “to the best of [his] knowledge” the applicant has been residing in the United States since 1981. The affiant then lists New York addresses for the applicant from 9/1981 – 8/1984, and 8/1984 – 9/1999. The affiant states that he met the applicant through the applicant’s uncle at a New York Mosque, and that he saw the applicant thereafter in the same setting.

states in his sworn affidavit that he has personal knowledge that the applicant resided in the United States as follows:

9/1981 – 8/1984 in New York;

8/1984 – 9/1999 in New York; and

9/1999 – the date of the affidavit in New York.

The affiant states that he knew the applicant since 1981 through the applicant's uncle who was an associate vendor of the affiant.

states in his sworn affidavit that he has personal knowledge that the applicant resided in the United States as follows:

9/1981 – 8/1984 in New York;

8/1984 – 9/1999 in New York; and

9/1999 – the date of the affidavit in New York.

The affiant states that he met the applicant at a park where the applicant came to play soccer. The affiant states that he knows the applicant as a good soccer player, and through their long friendship as a good person.

states in his sworn affidavit that he has personal knowledge that the applicant resided in the United States as follows:

9/1981 – 8/1984 in New York;

8/1984 – 9/1999 in New York; and

9/1999 – the date of the affidavit in New York.

The affiant states that he met the applicant at a Mosque where the applicant came with his brother. The affiant states that he grew to know the applicant through the applicant's brother, with whom the affiant worked for many years.

states in his sworn affidavit that he has personal knowledge that the applicant resided in the United States as follows:

9/1981 – 8/1984 in New York;

8/1984 – 9/1999 in New York; and

9/1999 – the date of the affidavit in New York.

The affiant states that he met the applicant "downtown" where the applicant and he worked as vendors.

states in his sworn affidavit that he has personal knowledge that the applicant resided in the United States as follows:

9/1981 – 8/1984 in New York;

8/1984 – 9/1999 in New York; and

9/1999 – the date of the affidavit in New York.

The affiant states that he met the applicant in 1981 when he first came to the United States. The affiant states that he met the applicant at the residence of the applicant's uncle where the affiant and the applicant's uncle visit.

APPLICANT'S SWORN STATEMENT

The applicant issued a sworn statement on December 5, 2006 before an immigration officer of the U.S. Citizenship and Immigration Services. In his statement, the applicant states that he first came to the United States in September of 1981, traveling with his uncle through Canada, and thereafter residing in New York. The sworn statement contains the following statements:

When asked for memories or anecdotes of New York City, the applicant could not come up with anything;

When asked for a movie or TV show, the applicant could not name one from the 80's;

When asked about subways or streets, the applicant could not name one;

The applicant could not name any public figure such as the Mayor or Governor;

The applicant said "I never had keys to my house when I was living here as a child;"

The applicant stated that he went back to Senegal in 1999. Between 1981 and 1999 he never took any trips or travels;

The applicant states that in 1987, he mailed in his application. He doesn't remember if the application was rejected, or what happened with it;

The applicant states that he never applied for Legalization, and that he never applied for CSS or LULAC;

The applicant states that he never applied on "the lawsuit" before the 2000 deadline, and he never filed any papers¹; and

¹ On appeal, the applicant explains that his uncle tendered paperwork on his behalf.

The statement notes that the applicant corrected question #1 on his application (Class Membership Worksheet) since he never traveled before 1999.

The applicant has submitted several sworn affidavits from other individuals in support of his application. The applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits failed to provide detailed information establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. All statements provided by the affiants were very general in nature. To be probative, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. 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.12(e), 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 the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

The additional evidence submitted and listed above does not establish the applicant's presence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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.12(e), 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 during the requisite period.

It should be further noted that statements made by the affiant in his sworn statement to U.S. Citizenship and Immigration Services fails to establish the applicant's unlawful residence in the United States during the requisite period. The statement does, in fact, establish significant doubt about the credibility of the applicant's assertions regarding his residence in this country since 1981. The applicant was unable to provide the interviewing officer with details concerning any "memories or anecdotes of New York City," was unable to provide the names of any New York subways or streets, was unable to name any public figures such as the mayor or governor, and could not name any television shows that appeared in the 1980s. This information can reasonably be expected from any individual living in New

York, as claimed by the applicant, from 1981 until the date of the applicant's statement (December 6, 2005).

Therefore, based upon the foregoing, 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.