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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-101-20853

Office: NATIONAL BENEFITS CENTER

Date: MAR 05 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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 Director, National Benefits Center. 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 January 9, 2006. 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, the director noted that the applicant had submitted only one document, an affidavit signed by [REDACTED] on May 25, 2006, which the director found to be insufficient evidence of residency and lacking in detail and supporting documentation, such as proof of identity. 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 submits a lengthy brief, a statement in which he claims that he entered the United States in 1978 but that he cannot prove this because he turned in his Form I-94 to [REDACTED] in 1989. He also states that he provided the affidavit by [REDACTED] in response to the director's request for evidence that he entered the United States before January 1982, and that he and Mr. [REDACTED] were very close friends who met in New York on January 15, 1982. He notes that as Mr. [REDACTED]'s affidavit is a notarized letter, the document is sufficient proof of his identity. Along with his brief, the applicant submits another copy of the affidavit and several documents that he claims are proof that the affiant resided in the United States during the requisite period and further evidence of the applicant's residence in the United States during the requisite period.

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). 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.

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 (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. In this case, the applicant has failed to meet this burden.

The applicant has provided no evidence of residence other than his own statements and one affidavit, the notarized letter from [REDACTED] dated May 22, 2006, noted above. The letter from Mr. [REDACTED] was submitted twice. The original was notarized on May 25, 2006 and was submitted in response to a Notice of Intent to Deny the I-687 Application, issued on March 29, 2006; a copy was submitted with the applicant's appeal brief on October 18, 2006. The copy has the exact same text but the affiant's signature is in a different place, the notary is different and the notary's certification lacks a date or any other indicia of authenticity. These different versions raise questions about the authenticity of the original submission. Moreover, [REDACTED] states that he has known the applicant since 1982,

“when he lived at [REDACTED] in Jamaica, New York, until 1989,” when they lost contact with each other. He adds that they met again by accident in Charlotte, North Carolina, in 2003. He states that they used to play sports together and exchange English and French lessons in New York. He does not provide any further details regarding how he met the applicant or the circumstances of the applicant’s residence from 1982 to 1989. His letter does not state that he met the applicant in January 1982, as claimed by the applicant; and it does not support the applicant’s assertion that he arrived in the United States before January 1, 1982. The applicant correctly states that a notary certifies the identity of the affiant, and no additional proof of identity is required. However, in this case, given the distinct copies of the letter in the record, there is some question regarding the validity of the notarization. In connection with this letter and in response to the director’s decision, as proof that the affiant resided in the United States during the requisite period, the applicant submitted a form on letterhead of Abraham Lincoln High School in Brooklyn New York, dated October 6, 2006, indicating that [REDACTED] attended the school until September 25, 1981. There is no indication that [REDACTED] is the affiant, who signs as [REDACTED]

and, regardless of the identity of the person who attended the school, the dates of attendance do not coincide with the dates of the requisite period. For the reasons noted, the affidavit, regardless of the relevance of the supporting documents, has minimal probative value as evidence of the applicant’s residence in the United States during the requisite period.

Although the applicant submitted other documents that he claims are evidence of his residence in the United States, none of those documents refers to him or to his residence. They are copies of the following documents: (1) a check, dated December 14, 1985, from either [REDACTED] or [REDACTED] of Jamaica, New York, to the New York Telephone Company; (2) the biographic data page of a U.S. passport issued to [REDACTED] in 2001; her marriage certificate showing that she was married in North Carolina on November 30, 1973; and two Certificates of Baptism dated in 1979 and 1983 for what appear to be her children. The applicant claims that these individuals are either friends or relatives who had personal knowledge of his situation in the United States; that he lived with the [REDACTED] when he resided in Jamaica, New York; and that he visited [REDACTED] for the baptisms of her children. Despite his claims, the applicant’s assertions are not reflected in the documents he submitted; and his statements alone are not sufficient evidence of his residence. As noted above, the regulations require that to meet his burden of proof the applicant must provide evidence of eligibility apart from his own testimony. These documents have no probative value as evidence of the applicant’s residence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant’s I-687 Application, his identity and travel documents, and his own statements. His birth certificate shows that he was born in Zaire on March 15, 1964; his passport was issued in Kinshasa, Zaire on October 16, 1985; it was renewed in Kinshasa on August 6, 1989. The passport contains an F-1 Student Visa issued in Kinshasa on January 8, 1991 and a U.S. immigration stamp showing that he entered at Boston, Massachusetts, on January 17, 1991. On his I-687 Application he states that he resided from 1978 to 1989 at [REDACTED] in Jamaica, New York; that his father died in June 1982; and that his absences from the United States since entry consisted of one trip from New York to Kinshasa “to change unlawful status” from “06-82” to “01-91.” The AAO notes that if the dates indicated for this trip are accurate, the applicant is contradicting his claim that he

resided in the United States for the requisite period. In his appeal brief, he states that he entered the United States in 1978 and remained “until I traveled back to Zaire March 15th 1989” and, in the same statement, that he was a teenager residing in New York “[w]hen my father died and I had to go back to Zaire.” The statement is internally inconsistent regarding his trips to Zaire and also contradicts the information provided on his I-687 Application regarding both the dates of travel and reasons for his absence from the United States. Moreover, the applicant, who would have been 13 or 14 in 1978, when he claims to have entered the United States, stated that he lived with relatives in New York during the requisite period. He does not claim to have attended school or to have been employed at any time during that period. The applicant has failed to provide any evidence from or about any relatives residing in New York or any evidence from any responsible adult regarding the circumstances of his travel to New York as a child and how he survived in New York during his childhood and throughout the requisite period. Moreover, the only credible evidence of his residence and travel indicates that he was residing in Zaire when he received his passport in 1985 and 1989 and his visa in 1991, and that he arrived in the United States in 1991.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. The one affidavit in the record is bereft of sufficient detail to support the applicant’s claim of residence since 1978; and the applicant’s assertions are not supported by any evidence. Moreover, multiple contradictions in his statements detract 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, the applicant’s reliance on one affidavit that has been found to have minimal probative value, and the inconsistencies in the record, 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.