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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]
MSC-05-133-11840

Office: NEW YORK

Date: MAR 06 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.

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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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 contends that because of the length of time he has no evidence of his entry without inspection from Canada into the United States, but he has presented a statement from a witness of his presence in the United States prior to January 1, 1982 with a copy of that witness' personal identification.

Further, the applicant asserts that the director erred when he misstated the name of an affiant who provided a statement in support of the applicant's application. The applicant is correct. Notwithstanding the error, the record of proceeding, as will be discussed, clearly reflects the director's determination that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status. The AAO reviews each appeal on a de novo basis.¹

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

¹ See 5 U.S.C. § 557(b).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 10, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be for approximately 23 years at 55 [REDACTED], New York, New York, from October 1981 to September 2004. Similarly, at part #33, he showed his first employment in the United States to be a self-employed street vendor at the [REDACTED] Bronx, New York, New York from 1983 to the present (i.e. 2005).

No evidence such as rent receipts, a lease, utility bills, tax receipts, U.S. mail directed to the applicant at the New York, New York, address, pay statements, tax records, or job references, was introduced by the applicant to substantiate the residency at one New York location for 23 years or his employment.

In the NOID dated July 22, 2005, the director requested evidence from the applicant of the adult who was responsible for the applicant's care and welfare since by the applicant's statements, the applicant entered the United States at the age of seven years.

The applicant provided a statement dated August 17, 2005, in response to the director's NOID dated July 22, 2005. He stated that he entered the United States in 1981 as a child in the company of his uncle [REDACTED] and from 1990 has been in the care of his uncle's friend [REDACTED]. No statements were received from [REDACTED].

The applicant submitted the following documentation in support of the I-687 application:

- An affidavit made February 2, 2005, by [REDACTED] of New York, New York, who affirms that he is a witness to the presence of the applicant in the United States. The affiant stated "I have [sic] [the applicant] before December 31, 1981 in New York." [REDACTED] had provided his address but no other information on the affidavit.
- A second affidavit made February 2, 2005, by [REDACTED] of New York, New York, who affirms that approximately 19 years ago he witnessed the applicant leaving the United States after November 6, 1986, and because "due to that temporary absence from the U.S., [the applicant] could not manage to successfully file for his Benefits for the LULAC/CSS Amnesty Program." [REDACTED] had provided his address but no other information on the affidavit.

Regarding the above affidavits, they lack any details that would lend credibility to an alleged 24-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified; and it is not accompanied by any evidence that [REDACTED] resided in New York for the relevant period. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with him.

The director denied the application for temporary residence on August 2, 2006. In denying the application, the director found that the applicant had provided no evidence that he entered the United States and was present as of January 1, 1982. The director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but acknowledges that he has no evidence of his entry without inspection from Canada into the United States, but he has presented a statement from a witness of his presence in the United States prior to January 1, 1982 with a copy of that witness' personal identification.

[REDACTED] has provided an affidavit dated August 17, 2005, that he is related to [REDACTED] the uncle of the applicant, and that [REDACTED] is [REDACTED]'s cousin. [REDACTED] refers to the applicant as "our little nephew." According to [REDACTED], he witnessed [REDACTED] and the applicant "since they arrived in New York in 1981." Also according to [REDACTED], he has financially supported the applicant since the applicant's uncle left the United States in 1990. He offers his personal U.S. federal tax return that does not show any dependents or evidence of that support.

Because of the close familial relationship, [REDACTED]'s statement has less value as an independent, objective statement offered to corroborate the applicant's assertions in this matter. Since [REDACTED] provides a different residence than the applicant's residence, the nature of his contact with the applicant is not demonstrated and [REDACTED] does not explain if he in fact had direct personal knowledge of the applicant's entry into the United States or of his residence here during the requisite period. [REDACTED]'s statement is not credible or probative to support the applicant's assertions in this matter.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously 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, it is concluded that he 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.