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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-05-193-11298

Office: NEW YORK

Date: **MAY 01 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:



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.

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 District. 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 April 11, 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 the applicant “failed to submit additional evidence for consideration” within the time allotted. 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 timely Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a written brief or statement. The applicant submits two letters and an affidavit 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. 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 April 11, 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] Brooklyn, New York, from November 1981 to October 1989. At part #33, he listed his first employment in the United States as self-employed in construction/odd jobs in Brooklyn, New York, from November 1981 to June 1996. At part #32, the applicant listed two absences from the United States since entry, but did not list any absences during the requisite period. At part #31, the applicant listed an affiliation with Raides All Joes Professional Club in Brooklyn, New York from 1996 to the present. The applicant also listed an affiliation with the Anglican Church, Avenue D, Brooklyn, New York, but did not provide a timeframe.

The applicant has provided a notarized form-letter “affidavit of witness,” a notarized letter and a non-notarized letter, a copy of his passport with a U.S. Immigration entry stamp dated July 3, 2002, a copy of his visitor’s visa issued on June 20, 2000, and a birth certificate. All three letters were apparently submitted for the first time on appeal. The applicant’s passport and birth certificate 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. The following evidence relates to the requisite period:

- A notarized form-letter “Affidavit of Witness” from [REDACTED] dated October 24, 2005. The declarant lives in Brooklyn, New York and states that she has known the applicant since 1981. The declarant states she has known the applicant “since 1981 where [sic] he worked as a building super [sic] for a long time.” Although the declarant states that she has known the applicant for 24 years, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant or how frequently she had contact with the applicant. 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.
- A notarized letter from [REDACTED] dated February 15, 2006. The declarant states that she has known the applicant for “twenty years.” The declarant also states that the applicant is “an active member of our block and church.” Although the declarant states that she has known the applicant for 20 years, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant or how frequently she had contact with the applicant. 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.
- A letter signed [REDACTED] dated January 25, 2006. The declarant states that he has known the applicant for “over twenty years.” Although the declarant states that he has known the applicant for more than 20 years, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. The declarant did not provide proof of his identity, he does not indicate under what circumstances he met the applicant more than twenty years ago, and he does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. 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.

For the reasons noted above, the witness documents submitted in support of the applicant’s claim have been found to lack credibility or to have minimal probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. These documents lack details sufficiently specific and extensive in time to establish that they are based upon a reliable factual foundation.

The director issued a notice of intent to deny (NOID) on December 28, 2005. The director denied the application for temporary residence on February 4, 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 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

The witness documents discussed above (from [REDACTED], and [REDACTED] provide 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. 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.

In this case, the absence of sufficient credible and probative documentation 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.