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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-251-10077

Office: BOSTON

Date: MAY 20 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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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 "R. 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, Boston, Massachusetts. 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 because of his inability to understand or comprehend the English language, the director was in error when the director stated that the applicant testified on October 26, 2005, that he resided in the United States from 1981 to December 1983 then he relocated to the Peoples Republic of China (PRC) to return to the United States in late January or early February 1987.

On appeal, the applicant disavows his signed statement that memorialized the above statement given at his interview as he contends that it was a “miscommunication” made through a “mistranslation.”<sup>1</sup> The applicant states that the absences he listed in part #32 of the Form I-687 are accurate.

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 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.

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<sup>1</sup> According to the record of proceeding, the applicant was interviewed with the aid of a translator.

The applicant has the burden of proving by a preponderance of the evidence that he 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 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 June 8, 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 at [REDACTED] Manchester, New Hampshire from December 1981 to June 1999, and thereafter at [REDACTED] Lawrence, Massachusetts, from June 1999 to present (i.e. May 16, 2005).

Similarly, at part #33, he showed his first employment in the United States to be for the [REDACTED] Lawrence, Massachusetts as a cook from December 1981 to May 1986, and at the [REDACTED] Salem, New Hampshire as a cook from May 1986 to September 1990.

The applicant submitted the following documentation:

The applicant's birth certificate stating that he born in Guangzhou City, Guangzhou Province the PRC on October 10, 1959.

- A photograph of the applicant and " [REDACTED] of Brooklyn, New York, date stamped "083' along with the New York State photo/driver's license of [REDACTED]

Three applications for transfer of funds from the applicant in Manchester, New Hampshire, dated February 9, 1982, August 10, 1982, and May 3, 1988.

- A medical test results report naming the applicant as patient made by Sunrise Medical Laboratories, Hauppauge, New York dated February 26, 1982.
- Copies of three airmailed envelopes addressed to the applicant at [REDACTED] Manchester, New Hampshire and postmarked 1982, 1983 and 1985.

A notarized statement made on January 13, 2006, by [REDACTED] of Brooklyn, New York, stating that he is a friend to the applicant and in December 1981 the applicant came to Manchester, New Hampshire, and resided with him for two months.

The director denied the application for temporary residence on March 3, 2006. In denying the application, the director found that the applicant's testified under oath on October 26, 2005, that he resided in the United States from 1981 to December 1983 when he relocated to the PRC to return to the United States in late January or early February 1987. According to the director, the evidence submitted by the applicant was insufficient to demonstrate that he had entered the United States and maintained continuous unlawful residency from before January 1, 1982 according to the regulation above cited at 8 C.F.R. § 245a.2(b)(1) and the regulation at 8 C.F.R. § 245a.2(6)(i) that states in pertinent part "an applicant for temporary resident status shall be regarded as having resided continuously in the United States if . . . no single absence from the United states has exceeded forty-five (45) days."

On appeal the applicant resubmits evidence he previously submitted.

Section 245A(a) of the Act sets forth the statutory requirements for eligibility for temporary resident status. Among those is the requirement that the applicant must prove continuous unlawful residence in the United States before January 1, 1982, and through the date the application is filed. Section 245A(a)(2) of the Act. The regulation at 8 C.F.R. § 245a.1(c)(1)(i) implementing this provision states, *inter alia*, that the continuous residence requirement is met when:

[n]o single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident

status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant has provided insufficient evidence of continuous residence in the United States relating to the requisite period. Reviewing all the evidence submitted by the applicant in this matter, the 1985 stamped envelope mentioned above is the only document that would support the applicant's presence in the United States after 1983. However, no proof has been submitted other than the envelope that the applicant was in the United States to receive the letter. Moreover, the record shows that the applicant has contradicted his claim of continuous residence as the applicant stated under oath on October 26, 2005, that he resided in the United States from 1981 to December 1983 and thereafter relocated to the PRC until 1987. Since the applicant's visit to PRC spanned three years it exceeded 45 days. The applicant's contradictory testimony and insufficient evidence of continuous residence raises doubts as to his current claims of residency.

The credibility of the applicant's evidence pertaining to his absence from the United States during the requisite period has been questioned by the director. We note that the applicant has at various times during these proceedings declared to CIS by his application and as well as in an interview on October 26, 2005 different dates for his residency in the United States during the requisite period. These dates are relevant to the issue of the applicant's absence from the United States during the requisite period since the absence was not disclosed to CIS when the applicant filed his application. If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Failure to submit requested evidence in response to the director's NOID that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

The absence of sufficiently detailed supporting 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 paucity of credible supporting documentation and the applicant's reliance upon one airmailed envelopes addressed to the applicant at [REDACTED] Manchester, New Hampshire as postmarked 1985, a document with minimal probative value, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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.