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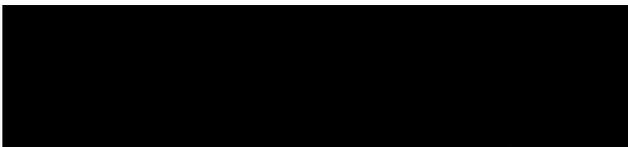
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-095-15905

Office: COLUMBUS Date: NOV 19 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. 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 "John F. Grissom".

John F. Grissom, Acting 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 of the Columbus office. 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 denied the application, finding 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.

On appeal, the applicant asserts that the evidence submitted by the applicant was more than sufficient to establish that he entered the United States on or about July 1980 and remained in an unlawful status until 1983.

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).

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) 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.

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 January 3, 2006. 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 failed to list any addresses prior to 1984. The immigration officer who interviewed the applicant appears to have written the following address on the Form I-687 at the applicant's instruction, without providing any dates of residence at the address: ██████████ Columbus, Ohio. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant failed to list any absences. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only employment with LifeCare Alliance from 1985 to 1998 during the requisite period.

The notations made by the immigration officer who interviewed the applicant on August 22, 2006 indicate that the applicant stated that he came to Canada in 1980. The notations indicate that the applicant then went to Buffalo, and then to Columbus. The notations indicate that the applicant worked in lawn care until 1983. This is inconsistent with the Form I-687, where the applicant failed to list any employment prior to 1984. The notations also indicate that the applicant stated that he returned home to see his mother in 1983 and returned less than twelve months later. This is also inconsistent with the Form I-687, where the applicant failed to list any

absences during the requisite period. These inconsistencies cast doubt on the applicant's claim to have resided in the United States throughout the requisite period. In addition, the applicant's oral statements in the interview tend to show that he was absent from the United States for more than 45 days beginning in 1983. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit home to Nigeria appears to have exceeded 45 days, and the applicant has failed to provide an explanation for the delay in his returning to the United States, his oral statements in the interview indicate that he did not reside continuously in the United States throughout the requisite period.

The record also includes a Biographic Information Form G-325A dated May 5, 2003 signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On the Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was a Nigeria address, where he resided from January 1979 to December 1984. This indicates that the applicant did not begin residing in the United States until December 1984. This information directly contradicts the applicant's claim to have resided in the United States throughout the requisite period.

The documentation that the applicant submits in support of his claim to have resided in the United States throughout the requisite period consists of attestations from individuals claiming to know the applicant, an employment declaration, W-2 Forms, and a lease.

The affidavits from [REDACTED] and [REDACTED] both contain statements that the affiants have known the applicant since 1980 in Columbus Ohio and provide general statements regarding their contact with the applicant during that time. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for 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; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Neither of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO

finds that, individually and together, these witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavits from [REDACTED] and [REDACTED] both indicate that the applicant was in the United States in 1980. Both affidavits refer to the applicant leaving the United States in 1983 and returning in 1984. The affidavit from [REDACTED] indicates that the applicant left the United States in the summer of 1983 and returned on January 9, 1984. Both of these affidavits conflict with the applicant's Form I-687, where he failed to list an absence from the United States in 1983 or 1984 when asked to list all absences. These inconsistencies cast doubt on the applicant's claim of continuous residence in the United States throughout the requisite period. In addition, the affidavit from [REDACTED] tends to show that the applicant's absence in 1983 to 1984 exceeded 45 days and, therefore, that the applicant did not reside continuously in the United States throughout the requisite period.

The declaration from [REDACTED], director of human resources for LifeCare Alliance, states that the applicant was employed from May 4, 1985 to February 19, 1998. The declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this declaration will be given only limited weight in establishing that the applicant resided in the United States from May 1985 until the end of the requisite period.

The applicant also provided a W-2 Form for 1988 that listed his name and indicated that he was employed by LifeCare Alliance. This document constitutes some evidence that the applicant resided in the United States for some portion of 1988. The applicant also provided W-2 Forms for 1985, 1986 and 1988 for employers who were not listed on the Form I-687 application. Since these documents conflict with the applicant's account of his employment during the requisite period, they will be given only minimal evidentiary weight.

The applicant also provided a lease document listing himself as tenant of a Columbus, Ohio property. This document is not deemed probative or credible because the dates of the lease term are not clearly legible, the term appears to be from 1982 to 1981, and the years of the lease appear to have been altered. This document will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The record contains a document signed by the applicant that directly contradicts his claim of continuous residence throughout the requisite period. He provided documents that contradict his statements regarding his activities during the requisite period. Lastly, he provided documents that tend to show he was absent from the United States for a period exceeding 45 days and, therefore, that he did not reside continuously in the United States throughout the requisite period. The applicant failed to provide an explanation for the delay in his returning to the United States, or for his prior statement indicating that he did not begin residing in the United States until

December 1984. Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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