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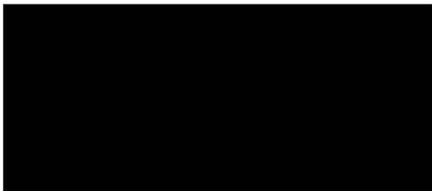
Office: CINCINNATI

Date: NOV 26 2008

IN RE: Applicant: 

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, or *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, Cincinnati, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had not satisfied the preponderance of the evidence standard that he had entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the applicant submitted only one item of evidence, an affidavit from [REDACTED] as proof of his continuous residence in an unlawful status in the United States throughout the requisite period. The director concluded in his final decision that the submitted evidence is insufficient to meet the burden of proof required under 8 C.F.R. § 245a.2(d)(6).

On appeal, counsel for the applicant states that the primary reason for the director's denial relies on the discrepancies between the applicant's testimony during the interview and his written submission, and further claims that such discrepancies are not unusual considering that the applicant was only 13 years old when he first came to the United States in 1981. The applicant through counsel further indicates that he would forward additional evidentiary documents to the AAO in 30 days. No additional documents, however, are found in the record or submitted to the AAO. More than five business days have passed since this office sent a query to counsel to submit additional documents. The record shall be considered 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 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 entered before January 1, 1982 and has resided continuously in the United States throughout the requisite period.

The applicant submitted one affidavit from [REDACTED] as evidence of his continuous residence in the United States throughout the requisite period. [REDACTED] claims to have known the applicant since 1981 when he arrived in the United States with his uncle and states that he has seen the applicant several times selling watches and sunglasses in Manhattan, New York. He further attests to the applicant's continuous physical presence in the United States from 1981. [REDACTED] affidavit; however, conflicts with the Form I-687 and with the applicant's testimony during his interview. At part #32 of the Form I-687, which requires applicants to list all absences from the United States, the applicant indicated that he visited family in Senegal / Gabon from December 1995 to September 1999. The applicant testified during the interview on November 14, 2006, that he left the United States in 1989 and came back to the United States in 1999. As the affiant stated that the applicant was continuously and physically present in the United States from 1981 to 2006, the affidavit is deemed not credible and will be given no weight. The applicant's written application and testimony about his departure from the United States is inconsistent and is also found not credible. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA

1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. On appeal, the applicant through counsel states that he would submit additional evidentiary documents within 30 days, but no additional evidence has been received. The applicant has failed to explain or reconcile such inconsistencies.

Additionally, [REDACTED] affidavit includes no details regarding how or where he met the applicant, how he became a good friend of the applicant when he has only seen the applicant several times selling watches and sunglasses, and whether he has direct, personal knowledge of the address at which the applicant was residing during the requisite period. Although the affiant claims to know the applicant as a street vendor selling watches and sunglasses, he fails to provide sufficient facts to lend credence to the assertions that the applicant has continuously resided in the United States since 1981. Because this affidavit is significantly lacking in relevant detail, lacks probative value and conflicts with the applicant's testimony, it has no weight as evidence of the applicant's residence in the United States during the requisite period.

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 lack of specificities 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 inconsistencies in the record and 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.