U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [redacted] Office: NEW YORK Date: OCT 09 2008
MSC-04-349-10753

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 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.

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 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 denied the application on January 13, 2006. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. Specifically, the director noted that the applicant had only submitted two affidavits in support of his application and that these affidavits only attested to the applicant's residence in the United States since March 1985 and March 1988, respectively.

On appeal the applicant has submitted school records and a health history form as further proof of his residence in the United States during the requisite period.

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).

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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 13, 2004. The applicant submitted the following documents in support of his application:

- An affidavit from [redacted] dated November 7, 2005. The affiant states that he met the applicant in March of 1985. The affiant does not explain how he dates his initial acquaintance with the applicant. In addition, the affiant fails to provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this application will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] which is not dated. The affiant states that she met the applicant in March of 1988 on the subway. The affiant states that, following that initial meeting, she kept in touch with the applicant "by phone, letters and visits from time to time." The affiant does not explain how she dates her initial acquaintance with the applicant and does not provide details regarding the nature and frequency of her contact during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

On appeal, the applicant has submitted school records and a health history form. Specifically, the applicant has submitted the following:

- A photocopy of a "Payment Contract for Parents who [SIC] Children Attend Sis. Clara Muhammad School." In this document, the applicant's mother——agrees to pay the tuition for the applicant to attend Sister Clara Muhammad School. The document bear's the signature of the applicant's mother and is dated September 10, 1981.

- A photocopy of a Pupil Progress Report from Sister Clara Muhammad School which bears the applicant's name and is for the school year from September 1981 to June 1982.

  A photocopy of a Pupil Progress Report from Sister Clara Muhammad School which bears the applicant's name and is for the school year from September 1982 to June 1983.

- A photocopy of a Health History Form which bears the applicants name and is dated October 1981.

These documents are not sufficient to establish the applicant's residence in the United States throughout the requisite period. The documents listed above are all "fill-in-the-blank" format. The applicant's name and the date have been written in on each of the documents, thus it is not certain that these are contemporaneous documents. Even assuming the validity of documents, they are insufficient to establish the applicant's continuous residence throughout the requisite period. These documents only relate to the period from September 1981 to June 1983.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. 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. The affidavits submitted by the applicant were of minimal probative value. The school and immunization records submitted by the applicant covered only the period from September 1981 to June 1983. Given these deficiencies, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period. 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.