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

PUBLIC COPY

LI

[Redacted]

FILE:

[Redacted]

Office: PROVIDENCE

Date:

OCT 14 2008

MSC 04 360 10015

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:

[Redacted]

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.

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, Providence. The matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period. On appeal, counsel reiterated the applicant's claim of eligibility.

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 Immigration and Nationality Act (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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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 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 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.

On the Form I-687 application, which the applicant signed on September 18, 2004, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that, from April 1981 to July 1988, he lived at [sic] New York, New York.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from April 1981 to July 1988 as a street vendor in New York, New York.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he was absent from the United States from July 1988 to August 1998, but listed no other absences.

The pertinent evidence in the record is described below.

- The record contains a photocopy of an airmail envelope postmarked February 7, 1982 and addressed to the applicant at "[redacted]," [sic] New York, New York.
- The record contains a letter, dated September 3, 2005, from [redacted] of the Masjid Malcolm Shabazz, at [redacted], in New York, New York. That letter states that the applicant attended Friday prayers at that masjid from 1981 to 1988. The writer further stated that he was personally aware that the applicant lived on [redacted] just three blocks from masjid. This office notes that the applicant claimed to have lived at [redacted]

[REDACTED] is not three blocks from [REDACTED], but barely more than a block.

- The record contains a letter, dated September 12, 2005, on what purports to be letterhead of the St. Vincent Catholic Medical Center of New York. That letter head states that the address of that hospital is “130 West 112 Street,” New York, New York. This office notes that address would typically be written as 112th Street, rather than 112 Street. Further, reference to the website of St. Vincent Catholic Medical Centers at <http://www.svcmc.org/>, accessed October 1, 2008, indicates that the address of that facility is on 12th Street, not 112th Street.

The record contains no other evidence pertinent to the applicant’s residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated January 20, 2006, the director stated that although the applicant claimed to have worked as a street vendor during the period of requisite residence, he was unable to identify the street or streets where he worked.¹ The director discussed the evidence in the record but found it insufficient to establish by a preponderance of the evidence that the applicant continuously resided in the United States during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response counsel submitted an affidavit, February 14, 2006, from the applicant, in which he reiterated his claim of continuous residence in the United States during the requisite period and identified three locations in New York where he stated he worked as a street vendor. The applicant did not explain why he was previously unable to identify those locations.

In the Notice of Decision, dated March 20, 2006, the director denied the application based on the applicant’s failure to submit evidence sufficient to show that he resided continuously in the United States during the requisite period.²

¹ The decision states that the applicant claimed to have been a street vendor for approximately six years, from 1982 to 1988. In fact, on the Form I-687 application, the applicant stated that he had worked as a street vendor in downtown Manhattan for more than seven years, from April 1981 to July 1988.

² The director also indicated that doubt existed that the applicant had been “front-desked” and, therefore, that doubt existed pertinent to his eligibility for CSS/Newman class membership. Because the director then issued a decision on the merits, however, and did not refer the applicant’s appeal to a special master as required by the CSS/Newman settlement agreement in cases denied for failure to qualify for class membership, this office finds that the denial on that basis was ineffective, and will treat the decision as a denial for failure to demonstrate continuous residence in the United States as required by section 245A(a)(2) of the Act. Counsel’s response to the issue of class membership will not, therefore, be addressed.

On appeal, counsel submitted an additional copy of the applicant's February 14, 2006 affidavit, but no new evidence. Counsel reiterated the applicant's claim of continuous residence in the United States during the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The authentic letterhead of the St. Vincent Catholic Medical Center would be unlikely to contain an obvious address error, as the letter the applicant submitted, on what purports to be the letterhead of that institution, does.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Absent any apparent innocent explanation for the discrepancy cited, the letter that is ostensibly from St. Vincent Catholic Medical Center, that the applicant submitted to support his claim of qualifying residence, is apparently inauthentic. Because of the applicant's submission of this apparently inauthentic letter, all of the applicant's evidence will be accorded very little evidentiary weight.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.