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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-015-10135

Office: NEW YORK

Date:

OCT 31 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. 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 District 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 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 noted that the applicant had failed to respond to the Notice of Intent to Deny (NOID), and that based upon the applicant's own testimony, he entered the United States when he was thirteen or fourteen years old, which was in 1982 or 1983. 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 states that he did not receive the NOID and that therefore, he did not have an opportunity to provide additional evidence. The applicant further states that he is submitting evidence on appeal to support his claim of eligibility for temporary resident status.

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. See 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 October 15, 2004. The applicant submitted no supporting evidence with his application.

On September 22, 2005, the director issued a Notice of Intent to Deny (NOID), stating that the applicant has failed to provide evidence that he entered the United States prior to January 1, 1982 and has continuously resided in the United States during the requisite period. The NOID was sent to the applicant’s address of record.

The applicant failed to respond to the NOID.

In denying the application the director noted that the applicant had failed to submit evidence to support his claimed entry into the United States. The director also noted that based upon the applicant's own testimony, he entered the United States at age 12 or 13, hence in 1982 or 1983.

On appeal, the applicant reasserts his claim of entry into the United States prior to January 1, 1982. The applicant submits the following attestations:

- A declaration from [REDACTED] in which he states that he has known the applicant since 1981, and that he has always found him to be an honorable and hardworking individual. Here, the declarant's statement is inconsistent with the applicants in that he stated that he had entered the United States when he was thirteen or fourteen years old, which would be 1982 or 1983. It is further noted by the AAO that the declarant fails to indicate under what circumstances he met the applicant, and he fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because this declaration is inconsistent with statements made by the applicant and because it is lacking in detail, it can be afforded only minimal weight in establishing the applicant's continuous unlawful residence in the United States during the requisite period.
- A declaration dated February 16, 2006 from [REDACTED] in which he states that he has known the applicant since 1981 when he met him as a little boy at an event in the community. Here, the declarant's statement is inconsistent with the applicant's in that the applicant stated that he had entered the United States when he was thirteen or fourteen years old, which would be 1982 or 1983. It is further noted by the AAO that the declarant fails to indicate under what circumstances he met the applicant, and he fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Although the declarant speaks of meeting the applicant when he was a little boy, he has failed to identify any adult or guardian who was responsible for the applicant's survival in the United States. Because this declaration is inconsistent with statements made by the applicant and because it is lacking in detail, it can be afforded only minimal weight in establishing the applicant's continuous unlawful residence in the United States during the requisite period.

In the instant case, the applicant has provided no evidence of his continuous unlawful residence in the United States since prior to January 1, 1982. He has failed to address the issues raised by the director in the NOID. Although the applicant claims to have resided in the United States since he was 12 or 13 years old, he has provided neither school records nor immunization records to substantiate such claim. He also failed to provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which he survived in the United States during his childhood and throughout the requisite period. Although the applicant stated during his interview with an immigration officer that he arrived in the United States with his father, there has been no evidence submitted to substantiate such claim.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents that have minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.