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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: SEP 04 2008

MSC-05-343-11588

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. 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, Chicago. The decision 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 (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 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 asserts his claim of eligibility for temporary resident status and asserts that he has submitted sufficient evidence to substantiate his claim. He submits as evidence attestations and a copy of his father's Death Certificate.

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 September 8, 2005. The applicant indicated at part # 30 of the application that his place of residence was 1018 North 2nd Street, Milwaukee, Wisconsin, from November of 1981 to July of 1995.

In response to the Notice of Intent to Deny, the applicant submitted the following attestations:

- A declaration from [redacted] in which she stated that she has known the applicant since 1985 and that she knew him from his work in the community fighting gang violence and organizing youth activities. The declarant fails to indicate the frequency with which she saw the applicant during the requisite period, or any other detail that would lend credence to her claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- Affidavits dated December 8, 2005 and October 30, 2006 from in which she stated that she has known the applicant since 1981 and that the applicant resided at from November of 1981 to June of 1982. This statement is inconsistent with the applicant's statement on his Form I-687 application at part #33 where he indicated that he resided at from November of 1981 to July of 1995. This inconsistency calls into question the credibility of the affiant's statement. Here, the affiant fails to specify where she met the applicant, the frequency with which she saw and communicated with him, or any other detail that would lend credence to her claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is inconsistent with statements made by the applicant and because it is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was not sufficient documentation to support his claim of continuous residence in the United States since before January 1, 1982, and that the applicant's testimony during his interview with immigration officers was unconvincing and not supported by documentary evidence.

On appeal, the applicant states that he entered the United States in March of 1981 as a minor with his father who is now deceased. He further states that his father kept all of the travel documents. The applicant resubmits the attestations of and . The applicant also submits on appeal a copy of a death certificate which shows that died in Kisumu on October 10, 2001. The applicant also submits the following attestations:

- An affidavit from dated January 16, 2006 from the Republic of Kenya in which she states that she is the applicant's mother and that he accompanied his father, to the United States on March 23, 1981. Here, the affiant fails to demonstrate her knowledge of when the applicant actually arrived in the United States, the frequency with which she saw or communicated with the applicant during the requisite period, or any other detail that would lend credence to her claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

  A copy of a letter dated February 18, 1981 that is addressed to "Immigration Department Nairobi, Kenya" from from the Office of the Chief Uyoma located in Kenya. Mr. states in the letter that the applicant's father, is scheduled to travel to the United States for training and that he will be accompanied by his son George, and that the purpose of the letter is to request assistance for and his son in obtaining the necessary travel documents. There is nothing in this letter which would indicate that the declarant possesses actual knowledge of the

> applicant ever entering the United States, or any other detail that would lend credence to the applicant's claimed residence in the United States during the requisite period. Because this declaration is significantly lacking in detail, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. He has failed to overcome the grounds for the director's denial. The attestations submitted by are inconsistent with the applicant's statements with respect to his claimed place of residence, and overall the attestations are lacking in detail. Although the applicant claims to have resided in the United States since he was a child, he has provided neither school records nor immunization records 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 attestations with minimum or no 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.