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U.S. Citizenship
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Services

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FILE:

[Redacted]
MSC-05-152-10555

Office: NEW YORK

Date:

SEP 24 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:

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 issued a Notice of Intent to Deny (NOID) the application on November 7, 2005. The director stated in the NOID that the applicant had testified before an immigration officer that he first entered the United States in December of 1982. Therefore, the director found that the applicant had failed to prove continuous residence in the United States throughout the entire requisite period and was not eligible for Temporary Resident status. The director provided the applicant with thirty days in which to submit additional evidence. No additional evidence was submitted and the director denied the application on February 14, 2006.

On appeal the applicant has provided two documents to establish his residence in the United States throughout the requisite period. Specifically, the applicant has provided a photocopy of a bank statement covering the period from November 20, 1982 to December 19, 1982, and photocopy of a medical bill dated September 12, 1982.

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 March 1, 2005. The applicant attached an additional sheet of paper to his application in which he provided a written response to part #32 on the application, which asked applicants to list all absences from the United States since January 1, 1982. In this written response, the applicant stated that he first entered the United States in November of 1981. However, as noted by the director, the applicant testified before an immigration officer on November 7, 2005 that he first entered the United States in December of 1982. This is a material inconsistency which detracts from the credibility of the applicant's claim.

In support of his application, the applicant submitted an affidavit from [REDACTED] dated February 23, 2005. The affiant states that he has known the applicant since 1986, and that they met in front of [REDACTED]. This affidavit lacks probative details such as how the affiant came to meet the applicant, how the affiant dates his initial acquaintance with the applicant, or the nature and frequency of the affiant's contact with the applicant during the requisite period. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has submitted two additional documents in support of his appeal. The first is a photocopy of a bank statement from Chemical Bank. It is addressed to the applicant and it covers the period from November 20, 1982 to December 19, 1982. The second document is a photocopy of a bill from Harlem Faculty Practices for medical services. The bill is dated September 12, 1982 and

indicates that the applicant had a previous balance from services performed on March 2, 1982 as well as new charges for services performed on July 8, 1982. These documents are insufficient to establish the applicant's residence in the United States throughout the requisite period in that they relate only to 1982. There is nothing in the record to establish the applicant's residence in the United States prior to January 1, 1982, except for the applicant's own statement on his Form I-687 application. As noted above, the applicant provided conflicting testimony in this regard. Further, even aside from the inconsistency, the regulations state that an applicant must provide evidence of eligibility apart from his own testimony to meet his burden of proof. 8 C.F.R. § 245a.2. The applicant has failed to provide such evidence.

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. Given the applicant's conflicting testimony and his reliance upon documents with 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. 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.