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

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FILE: [Redacted]
MSC-05-354-11689

Office: NATIONAL BENEFITS CENTER

Date: **APR 23 20**

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 Director, National Benefits Center. 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 furnished additional evidence in support of his application.

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. 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 on September 19, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from March 1984 until May 1989. The eligibility requirement for temporary resident status is that an applicant must establish he entered the United States before January 1, 1982. *See Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2)*. The applicant has failed to provide any information on his Form I-687 application to establish his continuous unlawful residence in the United States since prior to January 1, 1982.

The only supporting documentation the applicant submitted with his Form I-687 application is a copy of his birth certificate. While this document establishes the applicant's identity, it does not relate to his continuous residence in the United States during the requisite period.

On November 15, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R.

§ 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In rebuttal to the NOID, the applicant submitted his own statement, which in part provides, “I did not understand why I was denied but after reviewing a copy of my application I realized that there was an error on the form I-687 supplement, on question #5, page 10. I made a mistake and put yes as my answer to question #5, the answer is no.” The applicant failed to submit any additional documents or specifically address the basis for the intended denial of his application.

On September 9, 2006, the director issued a notice of denial to the applicant. In denying the application, the director determined that the applicant failed to provide any proof of his continuous unlawful residence in the United States during the requisite period. The director concluded that the applicant had not met his burden of proof by a preponderance of the evidence.

On appeal, the applicant submits a notarized letter from his spouse, [REDACTED], and a copy of their New York marriage certificate, dated October 13, 2005. The applicant asserts that he has provided the proper documents to prove his case.

The letter from [REDACTED], dated September 29, 2006, provides:

Back in 1982 my mother lost her ID card and [REDACTED]’s Aunt found it and returned it her [sic]. After one week my mother invited her over to dinner this was the first time I met [REDACTED] he was four years old and I was eight years old. I was the only child and my mother and his aunt would get together and go shopping and take us places like to the theater and to the park to play. [REDACTED] was my best friend and when he left to go back to Africa in 1989 my mother and I took them to the airport.

Pursuant to *Matter of E-M-*, in determining the weight of a statement, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. 20 I&N Dec. 77, 81. Most important is whether the statement of the author is consistent with the other evidence in the record. *Id.* It should be noted that there is no other documentary evidence in the record related to the applicant’s residence in the United States during the requisite period. The only evidence with which to evaluate [REDACTED]’s statement is the applicant’s testimony on his Form I-687 application. [REDACTED]’s statement that she has known of the applicant’s residence in the

United States since 1982 is inconsistent with his application. The application provides the date of the applicant's first residence in the United States as March 1984. Additionally, [REDACTED] statement fails to detail her personal knowledge of the applicant's continuous residence in the United States during the requisite period. Relevant details would include the frequency of her contact with the applicant, the location of where the applicant resided during the requisite period, and whether the applicant attended school or was home schooled. Given these deficiencies, this statement cannot be afforded any weight as credible and probative evidence.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.