U.S. Department of Homeland Security
20 Massachusetts Ave., NW, RM. 3000
Washington, D.C. 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK Date: DEC 12 2008

MSC 05-326-10828

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.

John F. Grissom, Acting 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 denied the application, finding 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. Specifically, the director stated that United States Citizenship and Immigration Services (USCIS) determined that the applicant had submitted documents that her office determined were fraudulent with his application. The director also went on to note other apparent discrepancies in the record.

On appeal, the counsel for the applicant asserts that the applicant testified under oath that documents he submitted were bona fide and credible and the applicant submits additional evidence for consideration 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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant's friends, and documents allegedly completed by the applicant in 1988 when he first attempted to apply for legalization. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

Affiant [redacted][1], states that he met the applicant in 1982 and states that he knows that the applicant first entered the United States prior to January 1, 1982, because he met him in 1982. However, this affiant could not have personal knowledge of the applicant's entry into the United States prior to January 1, 1982 if he met him in 1982. Further, this affiant does not state whether he knows if the applicant resided in the United States for part or all of the requisite period. Therefore, this affidavit carries no weight as evidence that he did so.

[1] This affidavit indicates it was notarized on March 11, 1993.

Affiant [redacted][2] states that the applicant is his relative and that the applicant first entered the United States before January 1, 1982 and then resided in the United States for the duration of the requisite period. However, this affiant fails to state the basis of his knowledge of the applicant's residence. He does not state when he first met the applicant or when he first saw the applicant in the United States.

Affiant [redacted][3] states that the applicant has been his close friend since 1982 and asserts that he worked at construction sites with the applicant. However, the affiant does not state where he first met the applicant or whether he met him in the United States. The affiant further fails to state whether the applicant resided in the United States for part or all of the requisite period. Therefore, this affidavit carries no weight as evidence that he did so. It is also noted that though this applicant claims to have worked with the applicant doing construction work, on the applicant's Form I-687, he indicated that his first work with a construction company began in 1998.

Affiant [redacted][4] states that he first me the applicant in 1983 and that the applicant left the United States from September 1987 to October of that year. However, this affiant does not state whether he knows if the applicant ever resided in the United States for part or all of the requisite period. Therefore, this affidavit carries no weight as evidence that he did so.

Though affiants [redacted] and [redacted] state that they have known the applicant since 1981 because they were friends with his father, the affiants do not state where they first met the applicant or whether they first met him in the United States. These affiants do not state whether they know if the applicant ever resided in the United States during the requisite period. Therefore, these affidavits can be accorded no weight as evidence that he did so.

As previously noted, the witness statements from [redacted], and carry no weight because, as previously noted, the affiants do not state whether they know if the applicant resided in the United States during the requisite period. The remaining witness statement from [redacted] fails to provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

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[2] This affidavit indicates that it was notarized on April 8, 1993.

[3] This affidavit is dated February 3, 1992.

[4] This affidavit is dated August 21, 1991.

The record also contains two Forms I-687, one purportedly signed and completed by the applicant in August of 1988, when he was 10 years old and the other of which was submitted in August of 2005 pursuant to the CSS/Newman Settlement Agreements. The director noted, as does the AAO, that the signatures on both documents are remarkably similar. This is of note because the applicant would have been 10 years old in 1988 and 27 years old in 2005.

Though counsel for the applicant asserts that the applicant has testified that all of the documents he has submitted were credible, the applicant has not provided an explanation for the director's finding that the Form I-687 bearing his signature and an August 1988 date and its accompanying questionnaire are not fraudulent apart from his own assertion. This is not sufficient to overcome the director's finding.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.