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FILE: [REDACTED]
MSC-05-246-12113

Office: LOS ANGELES

Date: **MAY 28 2008**

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 Records 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles. 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 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 stated that the director had failed to consider some of the evidence submitted by the applicant. The applicant stated that he was a baby when he came to the United States. His mother was afraid to disclose his undocumented status and, therefore, refrained from keeping up with his documentation.

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 (CIS) on June 3, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: 3310 Ransom [REDACTED] Long Beach, California from September 1981 to December 1985; and [REDACTED] Fontana, California from December 1985 to May 1995. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed a catholic church in Arlington, Riverside, California from 1982 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two attestations. The declaration from the applicant's mother, [REDACTED] states that she and the applicant came to the United States in 1981. The declarant stated that she and the applicant resided at the [REDACTED] address when they came to the United States. She stated that she stayed in the United States for seven years from 1981

to 1988 before she returned to Nigeria. The declarant failed to specifically state that the applicant lived with her in the United States throughout the requisite period. In addition, the declarant failed to provide detail regarding the applicant's absences and activities; whether he attended school or saw a doctor during the requisite period and, if not, why not; and who cared for him and provided for him during the requisite period. Considering that the declarant is the applicant's mother, this declaration lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the applicant is the affiant's half-brother. The affiant stated that the applicant came to the United States with his mother in 1981. The affiant indicated that the applicant lived with his mother "for a long time" before the applicant's mother decided to return to Nigeria. The applicant lived with the affiant "for sometime [sic]" before moving on to live with friends and relatives in Southern California. The affiant indicated that he currently resides at the [REDACTED] address. Although the affiant did not specifically state when the applicant began living with him, it is noted that the applicant indicated on his Form I-687 that he began residing at the [REDACTED] address in December 1985. Therefore, the affidavit seems to indicate that the applicant's mother moved back to Nigeria in December 1985. This information is inconsistent with the declaration from the applicant's mother, where she indicated that she resided in the United States until 1988 rather than until 1985. This inconsistency casts some doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, this affidavit fails to provide detail regarding the specific dates that the applicant resided in the United States during the requisite period, the affiant's frequency of contact with the applicant, whether the applicant was absent from the United States during the requisite period, and whether the applicant attended school while he was living with the affiant. The affidavit also fails to indicate whether the affiant has first-hand knowledge of the applicant's residence in the United States prior to the date the applicant began residing with the affiant. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted 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.

On appeal, the applicant stated that the director had failed to consider some of the evidence submitted by the applicant. The applicant stated that he was a baby when he came to the United States. His mother was afraid to disclose his undocumented status and, therefore, refrained from keeping up with his documentation.

In summary, the applicant has submitted attestations from only two people concerning the requisite period. The attestations from [REDACTED] and [REDACTED] lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. In addition, the attestations appear to contradict each other.

The absence of sufficiently detailed supporting 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 apparent contradictions between the documents provided by the applicant and given 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 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.