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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

MSC-05 330 10813

Office: NEW YORK CITY

Date:

JUL 23 2009

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:

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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant a native of Malaysia who claims to have lived in the United States since August 1981, 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 on August 26, 2005. 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.

On appeal counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for legalization.

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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.* 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 (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 AAO determines that the applicant has failed to meet his burden.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. It is noted that the applicant was about 13 years old in 1981 when he allegedly came to the United States. It is further noted that although the applicant claims that he traveled to the United States in 1981 with his uncle, the applicant has failed to provide any documentation from his uncle or an adult guardian to establish the said entry in 1981. The applicant has not provided any credible evidence of how he was able to care for himself or how he - a child of 13 years - was able to rent and pay for an apartment in New York City from 1981 to 1993. For someone claiming to have lived in the United States since August 1981, it is noteworthy that the applicant is unable to

produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

The record includes a photocopied letter from _____ manager/president of Lucky Garden Chinese Restaurant in Budd Lake, New Jersey, dated November 28, 2005, stating that the applicant was employed for two years. This letter does not comport with the requirements of 8 C.F.R. § 245 a.2(d)(3)(i) because the letter did not identify the applicant's address at the time of employment or at any other time during the 1980s, did not specify the period of employment, did not declare whether the information was taken from company records, where the records are maintained and whether the records are available for review. Nor is the letter accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed at the restaurant during the period indicated. Additionally, the applicant did not indicate on the Form I-687 he filed in 2005, that he was employed by Lucky Garden at any time during the 1980s. In view of these substantive shortcomings and possible fraud, the letter has little probative value. It is not persuasive evidence that the applicant resided continuously in the United States during the years 1981 to 1988.

The record includes two undated letters from individuals who claim to have met the applicant in the United States in 1981, and a letter from the applicant's sister in Malaysia stating that the applicant traveled to the United States on August 11, 1981. None of the letters provided the applicant's address in the United States during the 1980s. None of the letters provided information about the applicant's life in the United States such as where he resided or worked and the extent of their interactions with him over the years. The letters are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the 1980s. The letter from the applicant's sister merely stated that the applicant traveled to the United States in 1981 but provided no other information to show that the applicant resided in the United States during the 1980s. For the reasons stated above, the letters have little probative values as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The photocopied photographs of the applicant standing behind some of New York City landmarks have no probative value as evidence of the applicant's residence in the United States during the requisite period. The dates on the photographs show a processing date of August 16, 1991. Therefore, the dates suggest that the photographs were taken sometime in 1991, which is outside the requisite period and thus they cannot serve as evidence of the applicant's residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Given the paucity of evidence in the record, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1,



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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.