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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-017-10886

Office: NEW YORK

Date: JUN 15 2009

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. 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.

A handwritten signature in black ink, appearing to read "J. F. Grissom".

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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted, when considered together with the applicant's testimony, was not credible to support his claim of continuous residence in the United States throughout the requisite period.

On appeal, counsel for the applicant asserts that the applicant has provided credible evidence and consistent testimony to establish his continuous residence in the United States throughout the requisite period.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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.

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 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.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he resided in the United States continuously from before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

To prove that he has resided continuously in the United States throughout the requisite period, the applicant provided four affidavits. [REDACTED] states in his affidavit that the applicant worked at his store, [REDACTED] as a laborer from November 1981 to December 1989 but fails to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide information about where the applicant resided at the time of employment, what his specific duties were with the company, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. The affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period.

[REDACTED] claims in his sworn statement that the applicant was his tenant from November 1981 to December 1989 but presents no detailed information as to how much the applicant paid for the rent, where he worked, or what he did with his time in the United States during the requisite period. To be considered probative and credible, 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. Without sufficient detail describing the relationship with the applicant and without any corroboration from other contemporaneous documents, the affidavit lacks probative value and has only minimal weight as evidence of the applicant's eligibility for temporary resident status.

indicates in his affidavit that he first met the applicant in 1981 at his mother's house. Further, he states that the applicant frequently helped his mother collect and distribute cloths and toys to the needy children from 1981 to 1989. Similar to [REDACTED] affidavit, this affidavit also lacks probative value because the affiant does not state with specificity how he first met the applicant in the United States, how he dates his acquaintance with him, where the applicant resided during the requisite period, or offer other details about the applicant's life in the United States to establish the credibility of his assertion.

Finally, [REDACTED] claims in his affidavit that the applicant stayed at his home in Montreal, Canada, for two days before continuing to the United States in March 1987 but does not describe with sufficient detail where the applicant lived in the United States. The affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period.

Further detracting from the credibility of the applicant is his failure to explain on appeal how his two children, who were born in 1984 and 1987 in Sri Lanka, were conceived when he was in the United States during the requisite period and while his wife had always resided in Sri Lanka during that period. The AAO agrees with the director that the evidence submitted, when considered together with the applicant's testimony, does not establish by a preponderance of the evidence that the applicant resided in the United States continuously from before January 1, 1982 through the date he filed or attempted to file the application.

The lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract 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 inconsistencies in the record and 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.