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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
MSC-06-032-11204

Office: LOS ANGELES

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:



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.

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, 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 (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 sufficient to establish continuous residence in the United States for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the applicant has provided sufficient credible evidence to establish continuous residence in the United States since before January 1, 1982. Further, counsel claims that the director has erroneously denied the application solely because the applicant has only submitted affidavits.

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.

The sole 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 has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The applicant stated during his interview with a United States Citizenship and Immigration Services (USCIS) officer on November 27, 2006 that he had resided in the United States continuously since 1980. As evidence, he provided six affidavits from friends and families and a letter from his current employer. Additionally, the applicant, in response to the director's request for more evidence, submitted photocopies of his pay stubs received in 2006, a photocopy of his current passport and all of its pages, and photocopies of social security earnings statements of some of the affiants.

The letter from the applicant's current employer and the pay stubs received in 2006 are not relevant and will not be considered.

Both [REDACTED] and [REDACTED] state in their affidavits that they saw the applicant at the airport as he was leaving India to go to the United States in December 1979. Both also claim to have received money and letters from the applicant in the United States. Neither, however, describes with sufficient detail where the applicant lived in the United States, whom he lived with and who supported him financially, or whether he attended school during the requisite period. The lack of detail in their sworn statements is significant,

considering that the applicant was only fifteen years old in 1980. The affiants cannot be found to have personal knowledge of the applicant's residence in the United States, as neither of them was in the United States during the requisite period. Simply stating that the applicant lived continuously in the United States for a period of time without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982.

The remaining four affiants generally claim to have known the applicant since 1980, 1981, or 1983. Some submitted photocopies of their social security earnings statements to prove their residence in the United States during the requisite period. None of the affiants, however, provides specific information about the applicant's residence or life in the United States during the requisite period. None states with sufficient detail how he or she first met the applicant, how he or she dates his or her acquaintance with the applicant, where the applicant lived and worked, or how he supported himself financially during this period. 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.

The submission of affidavits alone will not always be sufficient to support the applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, none of the affidavits submitted offers detailed information about the applicant's residence and life in the United States during the requisite 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 has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

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 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.