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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 30 2010

MSC 04 300 11034

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

for Perry Rhew
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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Although the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [redacted] to act on behalf of the applicant, [redacted] is no longer authorized to represent the applicant pursuant to 8 C.F.R. § 292.1(a).[1] As such, the decision will be furnished only to the applicant.

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 asserts because he entered the United States without inspection in November 1981, he has no evidence to corroborate his entry. The applicant indicates that due to the passage of time he is unable to locate the affiant who can affirm his trip to Canada. The applicant once again denies that he is or has been in removal proceedings.

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)(1).

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[1] *See* http://www.usdoj.gov/eoir/profcond/chart.htm

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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 AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The first issue to be addressed is the director's finding that the applicant had been in removal proceeding.

On September 12, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the following:

> Upon review of Service records you were in Exclusion proceeding on March 15, 1996 under Alien number [redacted] At the time of these proceedings you never mentioned that you were in the United States in November 1981. You stated that you left on June 30, 1995 from Dhaka to Holland, Switzerland, Luxembourg and on to the United States. You arrived into the U.S. on July15, 1995.
>
> According to your testimony during that case you stated that you were a member of [redacted] in 1986. But yet you stating [sic] during the interview on September 12, 2007 you only departed from the United States in June 1987 for a one week visit to Canada.

An investigation by the AAO reveals that the documents pertaining to an individual who filed an asylum application and was issued alien registration number [redacted] does not relate to the applicant. The documents were erroneously incorporated into [redacted] Therefore, the adverse information noted above utilized to discredit the applicant's credibility will be withdrawn.

The second issue to be addressed 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

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit from [redacted] attesting to the applicant's residence in Brooklyn, New York since November 1981. The affiant indicated that he met the applicant in December 1981 at a friend's home in Brooklyn, New York.
- An affidavit from [redacted], who indicated that he has known the applicant since 1982, and attested to the applicant's absence from the United States from June 10, 1987 to June 18, 1987.
- A letter dated June 16, 1992, from [redacted] who attested to the applicant's absence from the United States to Canada from June 10, 1987 to June 18, 1987.
- A letter dated December 7, 1990, from [redacted] in Brooklyn, New York, who indicated the applicant was employed as a general helper from July 1987 to October 1989 and received his wages in cash. The affiant also attested to the applicant's absence from the United States from June 10, 1987 to June 18, 1987.

At the time of his interview, the applicant indicated that he entered the United States in November 1981 through the Canadian border.

On September 12, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his failure to substantiate a valid entry into Canada in November 1981, and that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record.

The applicant, in response, asserted that he had submitted sufficient affidavits to establish his claim. The applicant provided:

- A letter dated October 4, 2007, from [redacted] in Ozone Park, New York, who indicated that the applicant was in his employ as a part-time helper from January 1986 to November 1986.
- A letter dated October 7, 2007, from [redacted] in Brooklyn, New York, who indicated that the applicant was in his employ as part-time helper from June 1985 to November 1985.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on October 12, 2007.

The statements issued by the applicant have been considered. However, the AAO does not view the single affidavits discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

The employment letters from [redacted] and [redacted] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Further, the applicant did not claim on his Form I-687 applications to have been employed by [redacted] and [redacted]

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements do not provide detailed evidence establishing how they knew the

applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.