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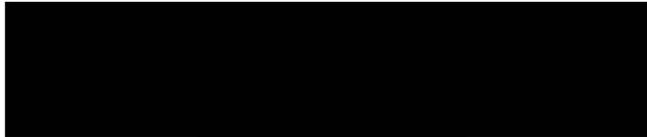
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 307 10469

Office: DALLAS

Date: **DEC 17 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 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, Dallas. 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 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, the applicant asserts that he has established his unlawful residence for the requisite time period and states that the director failed to accord due weight to the evidence he submitted in support of his application. He asserts that though the director stated that affiants from whom he submitted evidence did not supply identity documents, he submitted photocopies of his affiants' passports.

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 245(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).

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

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.

The issue in this proceeding is whether the applicant has established that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits written by the applicant’s friends and family, affiants’ identity documents, photocopies of the applicant’s passports and photocopies of concert tickets purchased during the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant has submitted affidavits from his mother, [REDACTED], his father, [REDACTED], and his uncle, [REDACTED] and from friends [REDACTED] and [REDACTED].

Affiant [REDACTED] is the applicant’s mother. In her affidavit, she states that she and the applicant arrived in Fort Worth, Texas in the fall of 1981, intending to stay for a visit. However, because of political unrest in Kenya in August of 1982, she states that she and the applicant delayed their return to Kenya. She states that she herself traveled to Kenya in 1983. However, she fails to state whether the applicant, who would have been a 13 year old minor at that time, traveled with her or remained in the United States at that time. Though the affiant states that she and the applicant resided in the United States during the requisite period, she does not provide details regarding their

addresses of residence or periods of time when the applicant was absent from the United States during the requisite period.

Affiants [REDACTED] and [REDACTED] are the applicant's father and uncle respectively. [REDACTED] states that he drove the applicant to the airport sometime before 1982 when the applicant was leaving for the United States and affiant [REDACTED], similarly, states that he was at the airport when the applicant left for the United States. Although the affiants provide details regarding their relationships with the applicant, neither states whether they know if the applicant resided in the United States for part or all of the requisite period. Therefore, these affidavits carry no weight as evidence that he did so.

Affiant [REDACTED] states that he has known the applicant since they met in Kenya in February 1981. He goes on to detail their interactions in Kenya and state that he was at the airport in Kenya when the applicant left for the United States. He further states that he called the applicant in 1983 when he himself began to study in the United States and, though he does not specify dates associated with visits, he states that during some of his breaks from school, he visited the applicant in Texas. He further states that he communicated with the applicant on weekends while he was attending college. He states that in the summer of 1986, he visited the applicant in Texas. Though this affiant states that he communicated with the applicant, he fails to provide specific dates associated with times that he saw the applicant in the United States. He further does not state whether there were periods of time during the requisite period when he did not see or hear from the applicant, or whether he knows if the applicant was absent from the United States during the requisite period.

Affiant [REDACTED] details his friendship with the applicant while they were both children in Mombassa, Kenya. Though he does not when these events occurred, he states that the applicant moved to Nairobi and then to the United States. He states that the applicant called him in 1982 to state that he was going to return to Kenya shortly. However, he states that because of political unrest in Kenya, the applicant and his mother and brother remained in Texas at that time. The affiant states that he received some letters from the applicant during the requisite period and also states that at the end of 1989, the applicant visited him on his way back to Kenya. It is noted that the applicant has stated that this trip took place from October 1990 to February 1991. Though the affiant provides considerable detail regarding his relationship with the applicant in Kenya prior to the requisite period, he does not state the frequency with which he heard from the applicant during the requisite period or whether he knows if the applicant was absent from the United States during the requisite period. Because this affiant never resided in or was physically present in the United States during the requisite period, he cannot have personal knowledge of the applicant's residence in the United States during that time.

Collectively, these affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide

evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

With the exception of the affidavit from [REDACTED], none of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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. Upon review, the AAO finds that, individually and together, though the witness statements provide details regarding affiants' relationships with the applicants, the witness statements do not indicate that their assertions regarding the applicant's continuous residence in the United States are probably true. Therefore, they have little probative value.

The record also contains two tickets to concerts that were issued during the requisite period. The ticket to the Johnny Cash Christmas Show indicates that this concert took place at [REDACTED] Texas in December of 1982. The record also contains a ticket for a concert featuring [REDACTED] at the Reunion Arena in Dallas, Texas in September of 1984. However, neither of these tickets indicates who they were issued to. Because they cannot clearly be associated with the applicant, they carry no weight as evidence of his residence in the United States during the requisite period.

The record also contains photocopies of passports issued to the applicant. Passport # [REDACTED] contains identity pages that indicate it was issued to the applicant. Of significance, page 29 of this passport states that the applicant's previous passport # [REDACTED] was issued to the applicant in Nairobi, Kenya on November 12, 1986. This indicates that the applicant was present in Nairobi, Kenya in November of 1986. Also in this passport is a stamp on page five that indicates that the applicant renewed his passport on March 19, 2002 while in Nairobi, Kenya; a visa to the United Kingdom and stamps that indicate that the applicant was in both London and Kenya in March of 2006. Passport # [REDACTED] also contains identity pages that indicate that it was issued to the applicant. Page 29 of this passport states that the previously noted passport # [REDACTED] was issued to the applicant in Nairobi in December of 1996. Collectively, these stamps indicate that the applicant was outside of the United States in November 1986; December 1996; March 2002; and March 2006.

This is not consistent with the applicant's Form I-687 application or with notes from the applicant's interview with an immigration officer regarding that application both indicate that the applicant has only been absent from the United States on two occasions. The applicant stated that he went to Canada for a family visit from May to June of 1987 and then to Kenya for a family visit from October 1990 to February 1991. While the applicant signed his Form I-687 in July of 2005 and therefore could not have been expected to have noted his travel in March 2006 on that form, his

interview with the immigration officer regarding this Form I-687 application took place in November 2006.

The fact that the record is not consistent regarding the applicant's absences from the United States either during or subsequent to the requisite period is material to the applicant's claim in that they have a direct bearing on the applicant's credibility in general and on his residence in the United States during the requisite period in particular. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 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.