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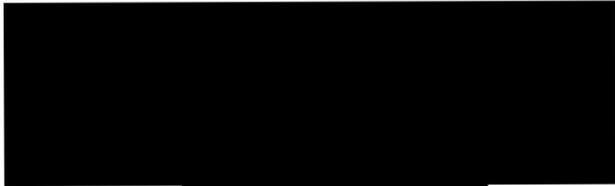
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-354-18726

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 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 that the director's actions in denying the application was an abuse of discretion, that the director failed to utilize the appropriate evidentiary standard in reviewing the evidence, and that the discrediting of the affiants by the director was inappropriate. The applicant states that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish his eligibility for temporary resident status.

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. See 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).

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.

At issue in this proceeding 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.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on September 19, 2005. The applicant submitted as evidence copies of two Eastern Airline boarding passes, a Johnny Cash Christmas concert ticket dated December 19, 1982, and an Elton John concert ticket dated September 29, 1984. However, because the documents are not identifiable to the applicant, the AAO is unable to determine their relevance to his claimed continuous unlawful residence in the United States.

The applicant submitted affidavits from his uncle [REDACTED], his father [REDACTED] and his mother [REDACTED] in which they stated that they have known the applicant all of his life and that they can attest to his coming to the United States prior to 1982. The applicant's uncle and father stated that they regularly spent time with the applicant playing sports, attending church

services and other activities, and that they were overall instrumental in the applicant's upbringing. They submitted copies of their passports which showed that they were residents of Kenya.¹ Although the applicant's father and uncle claimed to have reared him, his mother stated in her affidavit that the applicant traveled with her to the United States in 1981, and that he remained with her during the requisite period.² The affidavits presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on his residence in the United States during the requisite period. It is further noted that neither the applicant's father nor his uncle indicated that they had knowledge of the applicant's place of residence during the requisite period or that they were ever in the United States. 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. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since February of 1981 when they met at a wedding in Komothai, Kenya and that thereafter they developed a friendship. The affiant stated that he saw the applicant off from the Jomo Kenyatta International Airport in Nairobi in 1981. He further stated that he came to the United States as a student in 1983, and thereafter, communicated regularly with the applicant.
- A declaration from [REDACTED] in which he stated that he was a childhood friend of the applicant and that they lived next door to each other in Port Reitz, Kenya. The declarant stated that in 1981 the applicant moved to Nairobi, Kenya and that shortly thereafter, the applicant traveled with his mother to the United States to visit with a relative. The declarant stated that he communicated with the applicant once in 1982 and began receiving correspondence from him in 1984.

Here, the affiant and declarant fail to demonstrate that they had first-hand knowledge of when the applicant entered the United States or his whereabouts and the circumstances of his presence in the country during the requisite period. Because the attestations are lacking in detail, they can be afforded minimal weight in establishing the applicant's residence in the United States during the requisite period.

¹ It is noted by the AAO that the affidavits from [REDACTED] and [REDACTED] were notarized in Nairobi, Kenya and that the affiants admit to living in Nairobi, Kenya at the time the applicant moved to the United States.

It is further noted that although the applicant's mother claims to have brought him to the United States when he was 9 years old and remained in the country during the requisite period, she has failed to provide school records or immunization or medical records to substantiate such claim.

In denying the application the director noted that the evidence submitted by the applicant was not credible and was insufficient to overcome the grounds for denial.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. He resubmits copies of evidence already contained in the record of proceeding.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. The attestations are either contradictory to one another or are lacking in detail sufficient to substantiate the applicant's claim of eligibility for the immigration benefit sought.

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 this 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 evidence that is lacking in detail and that has little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.