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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 06 089 10749

Office: MIAMI DISTRICT (TAMPA) Date: JUN 19 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann
Robert P. Wiemann, 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 District Director, Miami, Florida, Tampa Sub-Office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

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, on December 28, 2005. The applicant was interviewed on September 20, 2006 in connection with his Form I-687. On October 31, 2006 the director denied the application.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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. 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on November 30, 2000. At an interview on September 20, 2006, the Form I-687 was further completed to show that the applicant lived at an unknown address in the Fort Lauderdale/Miami, Florida area from December 1980 to October 1987, except for two months spent in Queens, New York in 1985. The Form I-687 also was completed to show that the applicant left the United States in October 1987 and returned to the United States in December 1987 and left the United States again in 1991 and returned to the United States in 2000. The applicant's employment is listed as setting tile in Miami and Pomano Beach from 1981 to a few months prior to filing the application and as a dishwasher in New York from July 1986 to September 1986.

The record also contains a letter written by the applicant stating that he lived in the United States with his mother from March 1982 until December 1987. At the interview, the applicant signed a sworn statement declaring that he entered the United States first in November or December of 1980 with a passport at the port of Miami, Florida. The applicant also declared that he lived with friends for four or five years and worked setting tiles and bricks. The applicant further declared that he returned to Brazil in early October 1987 and returned to the United States just before Christmas with a passport and visa. He stated that neither of his parents ever came to the United States and that he returned to Brazil in 1991 because his mother was sick.

The record also contains an unsigned and undated form statement from [REDACTED] wherein Mr. [REDACTED] indicates that he knew that the applicant came to the United States before 1982 because he met him to buy merchandise in Miami and that he knew the applicant entered the United States on a tourist visa in Miami, Florida because the applicant told him he did so. The record also includes an undated signed form statement from [REDACTED] stating that she met the applicant in New York City in September of 1985 and knew that the applicant entered the United States prior to January 1982 because

he told her so. The record also contains photographs with various dates written on the back side of the photographs, a ticket to a show, and newspaper articles from various times in the 1980s.

The director denied the application based on the inconsistencies in the record and the lack of evidence in the record establishing that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States for the requisite time period.

On the Form I-694 (Notice of Appeal of Decision under Section 210 or 245A), the applicant states that he is appealing in order to “clarify the evidences” about his residence in the United States “before 1982 to May 1988” by his statement submitted on appeal and other items in the record, including photographs, a the show ticket, and the two witness declarations. In his statement on appeal, the applicant explains why he does not have copies of old passports. He also comments on his earlier statements about his residence in the United States and his living with his mother, as follows:

Reviewing the information given in my declaration dated Dec/19/2005 from the attachment I-687 and my interview in Sept/20/2006 I want to clarify that I lived with my mother illegally in the USA since March 1982. That is the truth. In any moment I said that my mother entered the United States with me. I came to the USA between November and December of 1980 with the intention to live with my mother that was already living here since 1979. My mother used to live in one bedroom rented from a family. So after living with my mother there for several months I decided to live with some friend sharing an apartment. We were 3 or 4 friends sometimes. I worked as a dishwasher, brick helper, tile installation [worker], and [at] other small hard labor jobs to pay living expenses. However, these jobs were paid in cash and without any contract, specially living here illegally.

The AAO notes the applicant’s assertion to the effect that in Portuguese the word “parents” encompasses other relatives as well as father and mother. Even so, the matters submitted on appeal do not resolve the discrepancies in the record regarding the applicant’s contacts with his mother during the requisite period. In particular, it is noted that in the September 20, 2006 Record of Sworn Statement the applicant indicated that his October 1987 trip to Brazil was to visit his parents and two sisters, and that “neither” of his parents “ever came to the United States.” In this context, it appears that the “parents” are his mother and father. This statement conflicts with the applicant’s assertions on appeal to the effect that his mother was living in the United States and that he took her to Brazil in 1987 “to see doctors and run some tests that we could not afford to do here in the United States.”

The photographs submitted do not independently identify the date the photographs were taken. Neither the newspaper articles nor the ticket to a show identify the applicant as the original purchaser. In any event, these documents do not reflect a significant part of the requisite period for which the applicant must establish continuous unlawful residence in the United States. The two statements submitted by Mr. [REDACTED] and Ms. [REDACTED] do not provide details describing the circumstances surrounding their relationship and interactions with the applicant that are sufficient to establish the applicant’s unlawful residence in the United States for the requisite period. These affidavits lack probative value in

establishing the applicant's continuous unlawful residence in the United States for the requisite time period.

As the director observed, the applicant's statements are inconsistent and have not been resolved on appeal. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.