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U.S. Citizenship
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FILE: [REDACTED] Office: ARLINGTON Date: NOV 06 2008
MSC 06-063-10966

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.

A handwritten signature in black ink, appearing to read "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, Arlington, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily 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 on March 5, 2006, after determining 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 noted that the applicant testified under oath during his interview with immigration officers that he was not eligible for benefits under Section 245A of the Act, in that he had not signed his Form I-687 application. The director further noted that pursuant to 8 C.F.R. § 103.2(a)(2), the application could not be considered as having been properly filed. 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 states that he is eligible for benefits under Section 245A of the Act and that the interviewing officer misconstrued his explanation for why his signature did not appear on the Form I-687 application. The applicant also states that the initials which appear in the appropriate signature blocks on the Form I-687 application were made by the preparer and do not disqualify him from receiving benefits pursuant to Section 245A of the Act.

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.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), December 2, 2005.

The director noted that the applicant had failed to submit sufficient evidence to establish his eligibility for temporary resident status.

On appeal, the applicant reiterates his claim of eligibility for the immigration benefit sought. He does not submit any new evidence.

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 throughout the requisite period. He has failed to overcome the issues raised by the director. It is noted by the AAO that the applicant testified under oath during his interview with immigration officers on January 22, 2007 that a friend of a friend prepared his Form I-687 application and that he does not know the name of the preparer. The applicant also stated during the interview that he did not sign his Form I-687 application because the deadline date for filing the application was near. He reiterates these statements on appeal. It is also noted by the AAO that block # 43 on the applicant's Form I-687 application which calls for the name and signature of the preparer, if not the applicant, has been left blank.

Beyond the decision of the director, the applicant submitted the following attestations:

An affidavit dated May 4, 2006 from [REDACTED] in which he stated that the applicant is his brother-in-law and that he has known him since the applicant got married to his cousin fifteen years ago. The affiant further stated that when in 1990 he learned that the applicant had married his cousin they established contact through phone calls. Here, the affiant does not indicate that he knew or communicated with the applicant during the requisite period. Therefore, the affidavit cannot be afforded any weight to establish the applicant's eligibility for temporary resident status.

- An affidavit from [REDACTED] in which he stated that he has known the applicant through his close friend since January of 2004 and that they have kept in contact with each other. The affiant also stated that according to the applicant, he has been living in New York with an Uncle since October of 1981. Here, the affiant does not indicate that he knew the applicant during the requisite period. It is also noted that the affiant's knowledge of the applicant's entry into the United States is not based upon his first hand knowledge of the applicant's circumstances. Because the affiant does not claim to have known the applicant until January of 2004, and because his statements concerning the applicant's entry into the United States are not based upon his first hand knowledge of the applicant's

circumstances, it cannot be afforded any weight to establish the applicant's eligibility for temporary resident status.

- An affidavit dated May 4, 2006 from [REDACTED] Ghana in which he stated that he knows through the applicant's wife, [REDACTED] that he has been in the United States since the latter part of 1981. He further stated that he got to know the applicant while attending the applicant's traditional marriage ceremony in Ghana, and that they have been in contact with one another through communicating on the phone and by sending cards and letters. The affiant fails to demonstrate first hand knowledge of the applicant's entry into the United States or his presence in the United States during the requisite period. It is also noted that there is no evidence to show that the affiant ever saw the applicant in the United States or knew of his place of residence during the requisite period. Therefore, the affidavit can be afforded only minimal weight in establishing the applicant's eligibility for temporary resident status.
- An affidavit from [REDACTED] Ghana in which he stated that he has known the applicant since they attended the same elementary school as school mates in Ghana. He also stated that the applicant has been in the United States for over twenty years, and that he was amongst the applicant's friends who saw him off at the airport in October of 1981. He further stated that he and the applicant have maintained contact with each other through phone calls, cards, and letters. The affiant fails to demonstrate first hand knowledge of the applicant's entry into the United States or his presence in the United States during the requisite period. It is also noted that there is no evidence to show that the affiant ever saw the applicant in the United States or knew of his place of residence during the requisite period. Therefore, the affidavit can be afforded only minimal weight in establishing the applicant's eligibility for temporary resident status.

The affidavits submitted have minimal or no probative value; and are therefore, insufficient to establish the applicant's residence in the United States since before January 1, 1982.

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 documents with minimal 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.