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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-060-13597

Office: NEW YORK

Date: OCT 16 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.

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, New York. 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 specifically noted that although the applicant stated during his interview with immigration officials that he had entered the United States in June of 1980, he stated that he could not remember any of his residences and that he never traveled outside of the United States. The director also noted that the applicant only listed one place of residence in the United States on his Form I-687 application at part 30 which was [REDACTED] in New York from June of 2005 to the present. The director further noted that the applicant submitted affidavits that were not verifiable. 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 he is eligible for temporary resident status and is submitting a Form I-687 application that is completely filled out, along with affidavits and other evidence to substantiate his claim.

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 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 Citizenship and Immigration Services (CIS) on November 29, 2005.

The record contains a chart submitted by the applicant where he indicated that he resided in Bronx, New York in 1980; at [REDACTED] in Bronx, New York from 1981 to 1982; at [REDACTED] in Brooklyn, New York from 1983 to 1986; and at [REDACTED] in Brooklyn, New York from 1987 to 1991. He also indicated on that chart that he was employed as follows: at [REDACTED] in Bronx, New York as a general laborer in 1980; at [REDACTED] in Bronx, New York as building assistant superintendent from 1981 to 1982; at [REDACTED]

MRA Associate Security Company located at [REDACTED] in New York as a security guard from 1983 to 1986; at Grace Courier Services in New York as a delivery person in 1987; and at Window on the Wall Restaurant as a kitchen attendant at the 1st World Trade Center in New York from 1988 to 1991.

The applicant submitted as evidence copies of pay statements from Grace Courier Services bearing the applicant's name as payee and dated November and December of 1987. The applicant also submitted as evidence copies of rent receipts dated November of 1987 and January, April, and September of 1988. The applicant submitted a copy of a lease agreement for the lease of the premises known as [REDACTED] in Brooklyn, New York from December 1, 1987 to November 30, 1989. This evidence is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he only listed [REDACTED] in New York to have been his address from June of 2005 to the date he filed his application. It is also noted that the applicant claimed not to remember his addresses when questioned during his interview with immigration officers.

The applicant also submitted the following attestations:

- An affidavit dated January 18, 2006 from [REDACTED] in which he stated that the applicant worked with him as a laborer and dry-wall worker from June of 1980 to September of 1980. Here, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the name of the company or the address(es) where the applicant resided during the claimed employment period. Nor does the affiant indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Because this affidavit does not conform to regulatory standards and because it fails to demonstrate the affiant's knowledge of the applicant's presence in the United States after September of 1980, it cannot be afforded any weight in establishing the applicant's continuous unlawful residence in the United States during the requisite period.
- An affidavit dated January 18, 2006 from [REDACTED] in which she stated that the applicant lived and worked in her apartment building at [REDACTED] in Bronx, New York, as assistant superintendent from January of 1981, and that he was still at the building when she left in October of 1982. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. She also fails to indicate any form of communication with the applicant subsequent to October of 1982. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States as claimed.
- An affidavit from [REDACTED] in which he stated that the applicant resided at [REDACTED] in Brooklyn, New York from December 1, 1987 to July 31, 1992. The

affidavit is accompanied by the lease agreement and rent receipts noted above. Although these documents are some evidence of the applicant's presence in the United States in 1987 and 1988, they are insufficient to establish his continuous unlawful residence in the United States since before January 1, 1982.

- A letter dated April 10, 2006 from [REDACTED] in which he stated that he has known the applicant for over thirty-five years, that they met in Nigeria, and that they resumed their relationship in the United States. The declarant further stated that the applicant has been a prayerist and apostolic leader in his church since its founding in 1996. Here, the declarant fails to specify when he arrived in the United States and when he resumed his relationship with the applicant after arriving in the United States. Because the declaration is lacking in detail, it can be afforded only minimal weight in establishing the applicant's continuous unlawful residence in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to submit evidence to support his claimed continuous unlawful residence in the United States. The director further noted that the applicant failed to present sufficient evidence during his immigration interview to substantiate his testimony concerning his entry into the United States, and that the applicant claimed to not remember his places of residence during that same interview.

On appeal, the applicant states that he did not state during his interview with immigration officers that he had forgotten his places of residence. The applicant also states that he is resubmitting the affidavits and receipts previously provided. He further states that he is submitting a completed Form I-687 application that was submitted in 2005 which demonstrates his continuous unlawful residence in the United States during the requisite period.

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. The attestations submitted are lacking in detail. Although the applicant submitted on appeal a copy of a Form I-687 Application for Status as a Temporary Resident under Section 245A of the INA, he must establish eligibility at the time of filing the nonimmigrant application. An application may not be approved at a future date after the applicant becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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 that are lacking in detail, 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.