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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK Date: OCT 30 2008
MSC-05-153-12383

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-REPRESENTED¹

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

¹ Though the applicant's Form I-694 Notice of Appeal of Decision is signed by [REDACTED] of Liberty Immigration Services, who indicates that he is the applicant's representative, and though the record contains a Form G-28 signed by [REDACTED], Mr. [REDACTED] is not an accredited representative and has previously been notified by Citizenship and Immigration Services (CIS) that he cannot lawfully represent applicants in matters before CIS. Therefore, the applicant is considered self-represented for these proceedings.

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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in her Notice of Intent to Deny (NOID), the director stated that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on February 27, 2006, the applicant testified that he first entered the United States in 1982. The director further noted the applicant's merchant marine logbook from Togo, which indicates that the applicant was onboard marine vessels for much of the requisite period. The director stated that the applicant failed to satisfy his burden of proving that he maintained continuous residence in the United States during the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Because the applicant did not submit additional evidence in response to the NOID, the director found he did not overcome her reasons for the denial of his application.

On appeal, the applicant asserts he submitted documents that are verifiable, including tax documents for the years 1995 through 2005, in response to the NOID.

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)(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) 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.

An applicant 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.1(c).

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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 2, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated his address in the United States during the requisite period to

be [REDACTED] in the Bronx, New York from August 1981 until July 1988. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. Here, he stated his first and only absence from the United States was from July 1988 to May 1995. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed as a street vendor in New York from 1981 until 1988.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes indicate that the applicant stated that he first entered the United States by ship in 1982. This indicates that the applicant did not first enter the United States prior to January 1, 1982.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record contains the following evidence that is relevant to the applicant's claim that he resided continuously in the United States for the duration of the requisite period:

- The applicant's Maritime book. This book indicates that the applicant was working on a marine vessel and either embarked on or debarked from a port outside of the United States at least one time each year of the requisite period.

That the applicant's Maritime book indicates that he worked on a marine vessel and was outside of the United States each year of the requisite period casts grave doubt on both his assertions on his Form I-687 that he worked as a street vendor in New York from 1981 to 1988 and that he was not absent from the United States during the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, 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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director issued a Notice of Intent to Deny (NOID) to the applicant on March 7, 2006. In the NOID, the director stated that she intended to deny the application because the applicant's statement at the time of his interview with a CIS officer that he entered the United States for the first time in 1982 and his merchant marine logbook indicated that that the applicant did not enter the United States prior to January 1, 1982 and then maintain continuous residence or continuous physical presence in the United States for the duration of the requisite period. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

While it is not clear that CIS received the applicant's response to the NOID prior to the time he submitted his appeal, there is a declaration dated March 20, 2006 that indicates it is the applicant's response to the NOID. In this declaration, he states that at the time of his interview with a CIS officer he actually testified that the applicant first entered the United States in November 1981 and began working in the United States with Alma Dominican Shipping in New York. He asserts that he then traveled to Togo from where he began working for Livret Professional Maritime aboard a Togolese vessel. He goes on to say that he returned to the United States around December 1982 and traveled back and forth from the United States at that time. He asserts that he maintained a United States mailing address while he was on board the vessel and that he paid taxes in the United States beginning in 1995.

The director denied the application for temporary residence on April 24, 2006. In denying the application, the director stated that because the applicant did not respond to her NOID, he failed to overcome her reasons for the denial of his application as stated in the NOID.

On appeal, the applicant asserts that he submitted verifiable documents in response to the NOID that included his tax documents from 1995 to 2005. He states that because he has produced these documents, his application for temporary resident status should be granted. It is noted that the record does not contain tax documents.

The AAO has reviewed the documents in the record that are relevant to the applicant's claim that he resided in the United States for the period from before January 1, 1982 until the end of the requisite period and has found that the applicant has failed to meet his burden of proof.

The notes from the applicant's interview with CIS indicate that the applicant claimed that his first entrance into the United States occurred in 1982. He has also submitted a merchant marine passbook that indicates that he was likely not physically present in the United States for the vast majority of the requisite period. While the applicant asserts that he maintained a United States mailing address while he was on board marine vessels, an applicant for this benefit must have maintained continuous residence and continuous physical presence in the United States. Maintaining a mailing address does not satisfy these requirements. Further, the applicant's merchant marine passbook, which shows that the applicant was working on a ship and absent from the United States during most of the requisite period casts doubt on statements made by the applicant on his Form I-687, where he stated that he was working as a street vendor in New York and that he was not absent from the United States at any time during the requisite period.

In this case, though the applicant claimed that he resided in the United States during the requisite period, the evidence in the record indicates that the applicant was not residing continuously in the United States for the duration of that time. He has also not been consistent when representing his absences from the United States to CIS. 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 fact that evidence in the record contradicts statements made on his Form I-687, it is concluded that he has failed to establish by a preponderance of the evidence that he has 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.