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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-183-10260

Office: NEW YORK

Date: APR 22 2009

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, 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 (together comprising the I-687 Application). The director denied the application, stating that the applicant had failed to provide sufficient credible evidence to establish continuous residence in the United States throughout the requisite period. Further, the director determined that the applicant was not a class member.

On appeal, the applicant contends that he has provided credible information and evidence to sustain his application for temporary resident status. To further support his eligibility for the benefit sought, the applicant submits an additional affidavit.

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)(1) 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.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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.

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 (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.

As noted above, the director denied the application and determined that the applicant was not a class member. Under the CSS/Newman Settlement Agreements, if the director denies the application solely because the applicant is determined to be a non-class member, the AAO shall have no jurisdiction over the denial of the application. Further, the denial notice shall explain the reason for the denial of the application for class membership and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

In this case, the director adjudicated the application on its merits, thereby treating the applicant as a class member. Although not raised as an issue by the applicant, the AAO finds that the appeal is properly before the AAO and not the Special Master.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

As evidence of his continuous residence in the United States throughout the requisite period, the applicant submitted seven affidavits and a letter from [REDACTED], New York. Upon review, the affidavits from [REDACTED] and [REDACTED] will not be considered since they do not relate to the requisite period.

all claim in their affidavits that they have known the applicant since 1982. They also state that they have personal knowledge of the applicant's attempt to file the application for temporary resident status during the original legalization period between May 5, 1987 and May 4, 1988. None of the affiants describes with sufficient detail how they first met the applicant in the United States, how they dated their acquaintance with him, where the applicant resided in the United States during the requisite period, or how often they talked or met with the applicant during the period specified in their affidavits. The lack of relevant detail in these affidavits casts serious doubt on the veracity of the affiants' claim that they have knowledge of the facts alleged. The affidavits have minimum probative value as evidence of the applicant's residence in the United States during the requisite period.

In his affidavit, [REDACTED] claims that the applicant lived with him on [REDACTED] in Astoria, New York from May 1981 to July 1992. [REDACTED] states further that while the applicant contributed some money to pay for the rent during that period, the apartment lease and all household bills were under his name. No contemporaneous documents such as the lease agreement, utility bills, or the rent receipts are submitted to substantiate the affiant's claim. Further, the affiant offers no detailed information as to how much the applicant paid for the rent or where the applicant worked to support himself during the period specified in his affidavit. The absence of contemporaneous documents combined with the lack of detail significantly weakens the probative value of the affidavit from [REDACTED]

[REDACTED] in his affidavit states that he met the applicant one week after the applicant arrived in the United States in 1981. Further, [REDACTED] claims that he bought clothes for the applicant since the applicant had nothing when he came to the United States in 1981. As indicated above, to be considered credible and probative, an affiant must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. An affiant must include sufficient detail from a claimed relationship to indicate that his or her relationship with an applicant probably did exist and that he or she does, by virtue of that relationship, have knowledge of the facts alleged. Here, the affiant provides no specific information about the applicant's whereabouts in the United States after his arrival in 1981 or other details of the events and circumstances of the applicant's life during the requisite period. The affidavit is not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period.

The letter from [REDACTED], New York states that the applicant has been an active member since October 1983. Further, the letter notes that the applicant has significantly contributed towards the development of the organization. Under 8 C.F.R. § 245a.2(d)(3)(v), attestations by organizations to the applicant's residence by letters must contain specific information to be considered probative and credible. Letters from organizations that do not comply with the specific requirements do not have to be accorded as much evidentiary weight as letters that otherwise comply. Here, the letter fails to comply with the regulations; the author does not include the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during his membership period, how the author of the letter knows the

applicant, and where he acquires the information relating to the applicant's membership in the organization.¹ Because this letter fails to include most of the information about the applicant's membership as prescribed by the regulations, and because it only testifies to the applicant's presence in the United States since October 1983, it will be accorded minimal weight as evidence of his eligibility for the benefit sought.

The absence of probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the witness statements seriously detract from the credibility of the applicant's 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 lack of supporting documentation and the lack of detail in the witness statements, it is concluded that the applicant 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.

¹ The applicant did not list [REDACTED] New York at part #31 of his Form I-687.