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U.S. Citizenship  
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Services

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FILE:

MSC 06 070 12432

Office: NEW YORK

Date: FEB 03 2009

IN RE:

Applicant:

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:

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 "John F. Grissom".

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 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. In so finding, the director noted that the applicant had stated that he first entered the United States in February 1981 with his father and was 12 years old at that time. The director also noted that the record did not contain the type of evidence that could be expected for a young person in this country such as school, immunization or medical records. The director also found that although the applicant stated that he traveled outside the United States on two occasions in September 1982 and August 1987, he had not provided evidence of departure and re-entry for that time period.

On appeal, counsel states the applicant first entered the United States in 1981 with his father Abdul [REDACTED] and his mother [REDACTED]. Counsel further states that unfortunately, as his parents never enrolled him in school or provided him with medical care or immunizations, he can only rely upon the affidavits that were provided. Counsel submits a copy of [REDACTED]'s death certificate and a copy of a Form I-601, Application for Waiver of Ground of Excludability and a partial Form I-687, and a partial Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, that the applicant's father signed on March 20, 1991 as evidence to support 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 application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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.

The pertinent evidence in the record is described below.

1. Three nearly identical notarized “Affidavit of Witness” statements from [REDACTED] dated January 23, 2006, [REDACTED] dated December 14, 2005, and [REDACTED] dated January 23, 2006, who state they are acquainted with the applicant and have known him since 1981.
2. An “Affidavit of Residence” statement from [REDACTED] dated January 16, 2000, who states that he has known the applicant in New York since 1984.
3. A notarized statement from [REDACTED] dated January 20, 2006, under the letterhead of the [REDACTED] Restaurant in New York, indicating that the applicant worked there as a waiter from 1987 to 1990, left and then returned and is currently employed by the restaurant.

The three nearly identical notarized “Affidavit of Witness” statements (Item # 1 above), do not supply enough details to lend credibility to an over 23-year relationship with the applicant, nor does the affidavit of residence statement (Item # 2) provide enough detail to lend credibility to an over 21-year relationship. These affiants have minimal probative value in supporting the applicant’s claim that he entered the United States prior to January 1, 1982, and resided in this country for the entire requisite period.

On his Form I-687, the applicant claimed that he had not worked in the United States from January 1, 1982 until the December 9, 2005, the date of filing. Therefore, the employment letter (Item # 3) is not credible. Additionally, the employment verification letter does not provide the applicant’s address at the time of employment and identify the location of such company records

and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The director noted that had the applicant entered the United States in 1981 as claimed, he would have been twelve years old at the time. The director also noted that the record did not contain the type of evidence that could be expected for a young person in this country such as school, immunization or medical records. On appeal, counsel states that unfortunately, the applicant's parents never enrolled him in school or provided him with medical care or immunizations. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted employment history on his Form I-687, is accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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