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U.S. Citizenship
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Services

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[REDACTED]

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FILE: [REDACTED]
MSC-06-082-13644

Office: NEW YORK

Date: FEB 23 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:

[REDACTED]

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.

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 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 denied the application, finding 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 further determined that the applicant's inconsistent statements render him inadmissible to the United States for willfully misrepresenting material facts to procure a benefit under the Act.

On appeal, the applicant asserts that he has never traveled outside the United States since his arrival in October 1982. The entire record was reviewed and considered in rendering this decision.

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 245(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)(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of notarized statements of relationship written by friends, and copies of his prior passport and Form I-94 (Departure Record). The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains notarized witness statements of relationship from [REDACTED] and [REDACTED]. The statement from [REDACTED] provides that she is aware of the applicant’s presence in the United States since the “early eighties.” The statements from [REDACTED] and [REDACTED] provide that they have known the applicant since 1982. These witness statements fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the witness statements. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed

relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

For instance, the witness statements do not indicate how frequently the witnesses had contact with the applicant during the requisite period. Nor do they indicate how the witnesses had personal knowledge of the applicant's presence in the United States during the requisite period. Furthermore, the witness statements from [REDACTED] and [REDACTED] fail to indicate how they date their initial meeting with the applicant. The witness statement from [REDACTED] indicates where she first met the applicant; however her testimony is inconsistent with the applicant's Form I-687 application. Ms. [REDACTED] states that she first met the applicant in 1982 at his place of employment, a car wash. However, the applicant's Form I-687 application shows that he was first employed at a car wash in June 1983. Moreover, the statement from [REDACTED] fails to indicate the exact year that she first met the applicant. Finally, the witness statements fail to provide information regarding where the applicant lived during the requisite period. Notably, the applicant failed to show his residence during the requisite period on his Form I-687 application. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record also contains copies of the applicant's Form I-94, Departure Record, and expired Ghanaian passport. The applicant's Form I-94 shows that he was admitted to the United States at New York, N.Y. on October 26, 1982 as a B-2 visitor. The applicant's passport contains the B-2 visa that was issued on October 13, 1982 at the United States consulate in Cotonou, Benin. The passport bears a United States admission stamp as evidence of his admission to the United States on October 26, 1982 as a B-2 visitor. The passport was issued on August 3, 1982 by the Ministry of Foreign Affairs in Ghana. Notably, the applicant failed to indicate on his Form I-687 application that he was in either Ghana or Benin during the requisite period. Accordingly, these documents show that the applicant was present in the United States on October 26, 1982, but they also cast doubt upon the credibility of his presence in the United States prior to this date. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In denying the application, 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 further determined that the applicant's inconsistent statements regarding his absences from the United States render him inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for willfully misrepresenting material facts to procure a benefit under the Act.

The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹ In its *de novo* review, the AAO finds that the director's determination of inadmissibility is not supported by the record. Therefore, the AAO withdraws the director's finding that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for willfully misrepresenting material facts to procure a benefit under the Act. However, the AAO affirms the director's finding that the applicant has 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.

A review of the record shows that the applicant has provided only minimally probative evidence of his continuous residence in the United States during the requisite period. As described above, the applicant's witness statements contain numerous deficiencies that when viewed individually and together do not indicate that their assertions are probably true. The applicant's Form I-94 and passport show his presence in the United States on October 26, 1982; however this evidence does not cover the entire requisite period. Further casting doubt upon the applicant's claim is that he failed to list on his Form I-687 application any residences in the United States prior to May 1993.

Furthermore, the applicant has not established his entry into the United States prior to January 1, 1982. The applicant's Form I-687 shows that he has never had any absences from the United States since his first entry. However, his passport shows that he was outside the United States in August 1982 and October 1982. This information draws into question whether the applicant first entered the United States in October 1982. On appeal, the applicant states that he has never traveled outside the United States since his arrival in October 1982. This statement again indicates that the applicant first entered the United States in October 1982.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).