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U.S. Citizenship
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FILE: [Redacted]
MSC-05-336-10980

Office: MIAMI

Date: JAN 12 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:



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, Miami. 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, finding that the applicant had submitted insufficient evidence to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status throughout the requisite period. In denying the application, the director also noted that the applicant failed to appear for his second interview on February 5, 2007.

On appeal, counsel for the applicant submits a brief in which he asserts that the applicant has submitted sufficient credible evidence to overcome the burden of proof. Based on the evidence submitted, counsel states that it is more likely than not that the applicant entered the United States in summer 1981 and has resided continuously in the United States in an unlawful status for the duration of the requisite period.

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 burden is upon the applicant to prove 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). 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.

The issue here is whether the evidence that the applicant has submitted is sufficient to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States throughout the requisite period.

To show continuous residence in the United States throughout the requisite period, the applicant submitted the following: three letters of support from friends; a memorandum from [REDACTED] to the applicant's mother dated September 19, 1983; a letter from [REDACTED] dated June 24, 1984 to the applicant's mother; the applicant's vaccination record dated December 23, 1985; and a photocopy of identity badge from [REDACTED] valid from June 1, 1987 to June 1, 1988. Additionally, the applicant signed a written statement, claiming that he lost all of his important documents including his Form I-94 due to a fire incident at his apartment that happened in 2003. The official fire incident report is submitted along with the application.

As stated above, the application of the preponderance of the evidence standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, established that something to be proved is probably true or more likely than not. *Matter of E-M-*, *supra* at 80.

Of the three letters submitted, the letter from [REDACTED] is irrelevant and will not be considered. [REDACTED] claims to have known the applicant since 1997, which is outside the requisite period for temporary resident status pursuant to Section 245A of the Act.

In her letter, [REDACTED] states that her family provided housing for the applicant and the applicant's mother in Plantation, Florida, between 1981 and 1988. [REDACTED] further indicates that the applicant's mother worked as a baby-sitter and a domestic worker at her house until 1988 while the applicant continued to stay with the [REDACTED] until 2001. The letter, however, contains no address or telephone number of the author. Hence, its content is not amenable to verification. Moreover, [REDACTED] failed to provide any specific address or addresses pertaining to her residence in the United States, specifically during the time her family provided housing for the applicant, and further did not include any corroborating evidence to substantiate the claim that she did reside and provide housing for the applicant in the United States within the period specified in the letter. For these reasons [REDACTED]'s letter has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In his notarized letter, [REDACTED] states he first met the applicant when he was riding a bumper car at "Grand Prix" just before Thanksgiving in 1981. According to [REDACTED], the applicant was at Grand Prix too with his mother and another family from Plantation. Since then, he and the applicant became friends and often met at Griffin Park, playing baseball together, the Grand Prix, and other events from 1981 through 1987. The affiant fails to state with any specificity how often he and the applicant met and whether he has personal knowledge of the applicant's whereabouts during the requisite period, specifically between 1981 and 1987; therefore, his letter lacks probative value and has only minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

In her memorandum dated September 19, 1983, [REDACTED] states her willingness to tutor the applicant in the English language every other month. She further indicates that this tutoring is only meant to enhance the applicant's English and not for public school credit. Viewed individually however, the memorandum does not show that the applicant has, in fact, attended [REDACTED] tutoring session in 1983, and for that reason, the memorandum is not probative for establishing residence in the United States in 1983 or continuous residence in the United States during the requisite period.

To show that the applicant was in the United States with his mother in 1984, he submitted a copy of a letter addressed to his mother, [REDACTED], dated June 24, 1984 from [REDACTED]. In that letter, the author expresses his gratitude for [REDACTED] and "her family" to visit the church. Viewed individually however, the letter from [REDACTED] does not establish that the applicant actually went to the church with his mother in 1984. The letter does not state the applicant's name or the name of any family member who went to visit the church in 1984. Therefore, the letter from [REDACTED] is not evidence of the applicant's presence or residence in the United States in 1984.

The record also includes a copy of a vaccination report from [REDACTED] and a badge from [REDACTED]. The vaccination record shows that the applicant received a vaccination on December 23, 1985, and the badge shows the applicant was issued a membership to [REDACTED] a youth teen center located in Ft. Lauderdale, Florida, from June 1, 1987 to June 1, 1988. The vaccination record is evidence that the applicant was in the United States in 1985. Similarly, the badge is evidence which tends to show that the applicant was in the United States in June 1987. However, the vaccination record and the badge are not evidence of the applicant's continuous residence in the United States throughout the entire requisite period.

Viewed individually and within totality of the evidence, the AAO determines that while the applicant has submitted some credible evidence that he resided in the United States during some parts of the requisite period, the applicant has failed to meet the burden of proving by a preponderance of the evidence that his residence in the United States is continuous throughout the requisite period. Specifically, no credible evidence is provided to support that the applicant was in the United States from 1982 to 1984 and in 1986.

The applicant further claims that all of his supporting documentation including his I-94 was lost in a fire that happened at his residence in 2003. A review of the applicant's Form I-687 reveals that the applicant listed an address at [REDACTED] Plantation, Florida from November 2001 to around September 2005. The fire incident report states that the incident occurred at [REDACTED] Davie, Florida, on September 6 and 8, 2003. While lost of documentation due to fire may be a reasonable cause for not being able to provide additional evidence of eligibility or the benefit, the inconsistency regarding his residence in 2003 between his Form I-687 and the fire incident report in this case seriously undermines the applicant's claim that a fire did occur at his apartment in 2003 and damage all of his documentation. As stated above, the burden is on the applicant to prove by a preponderance of the evidence that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status since such a date until he filed or attempted to file an application for temporary resident status pursuant to Section 245A of the Act. The burden is met when, based on relevant, probative, and credible evidence, the applicant's claim is probably true.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously detract from the credibility of his 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 credible supporting documentation, 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.