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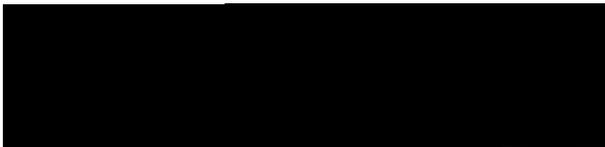
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U.S. Citizenship  
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FILE:

MSC-05-284-11296

Office: NEW YORK

Date:

**JAN 29 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.

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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He further asserts that the director “failed to consider the totality of the evidence and testimony given by the applicant,” and that the director “has provided no legal reasoning, nor factual analysis to support her conclusion that the affidavits and evidence lack credibility and probative value.”

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) 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, 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).

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 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 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 several affidavits and letters; a copy of the applicant's passport; and, a copy of the applicant's New York identification card. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. 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 employment affidavits from two companies. In the first affidavit, [REDACTED] indicates that he was the owner of [REDACTED] and that the company employed the applicant from April 1981 until January 1986. He also indicates that the applicant lived on the premises during the same period. On January 27, 2004 the applicant was interviewed in connection with a Form I-485 Life Act application filed with Citizenship and Immigration Services (CIS) on November 7, 2001. During this interview, the applicant indicated that he lived in the basement of the car dealership. However, CIS contacted the business and the individual who answered indicated that the dealership was located in a trailer. He also indicated that he had no knowledge or records of either the applicant's employment or the former owner, [REDACTED]. The applicant was given an opportunity to explain this discrepancy. His explanation was that, "I mentioned that I lived in the basement of his used car dealership during the period when in fact I lived in a trailer. I mentioned that I lived in the basement because I confused it with the basement that I had lived in when I returned from California in 1990."

In the second employment affidavit, [REDACTED], owner of [REDACTED], indicates that the applicant was employed by the firm from March 1986 until November 1989 as a skilled laborer. He provides no additional relevant information.

Neither of the above affidavits meet the regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Neither of the above affidavits include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The applicant also submitted a handwritten receipt from [REDACTED] dated April 1981. While, this receipt contains the applicant's name, the official date stamp from the Bank is illegible.

Furthermore, the record contains affidavits from the following individuals:

- [REDACTED], who indicates that he met the applicant in April 1981 and that they are close personal friends and talk to each other often. Although the affiant states that he has known the applicant since before January 1, 1982, his statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant, how frequently they had contact with each other, or how he has personal knowledge of the applicant's presence in the United States. Further, the affiant does not provide information regarding where the applicant lived during the requisite period.

- who indicates that he first met the applicant in the summer of 1981 while attending religious services at Maki Mosque in Coney Island. He also indicates that he did not see the applicant regularly again until 1985 when they were reintroduced by a mutual friend. He indicates that the applicant lived at several addresses in Brooklyn but that he only visited him at the Brighton Beach address. The applicant indicates that he lived in Brighton Beach from 1986 until December 1989.

who indicates, in an affidavit dated March 29, 1990, that he met the applicant in April 1981 and lived with the applicant at from February 1986 until December 1989. In a subsequent affidavit dated June 23, 2004, the affiant indicates he lived with the applicant from mid-1988 until December 1989. He does not explain this discrepancy, nor does the affiant indicate how he dates his initial meeting with the applicant, or how frequently they had contact with each other.

- who indicates that he met the applicant in the winter of 1981 at the Maki Mosque. The applicant indicates that he did not enter the United States until April 1981. Thus, the testimony of the affiant is not credible. Furthermore, while he provides details regarding the applicant's children and various sporting activities, he does not indicate how he dates his initial meeting with the applicant, how frequently they had contact with each other, or how he has personal knowledge of the applicant's presence in the United States for the entire relevant period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in April 1981, the applicant's New York identification card, employment authorization card, and passport. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. The New York identification card, employment authorization card, and passport are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Thus, 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.