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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK Date: JUL 24 2009
MSC-05-052-10043

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 cursive script, 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, or *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 of the New York office and 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 (LULAC) 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 time period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. The AAO has considered the applicant's assertions, 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

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)(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) 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

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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

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 witness statements and documents. 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. 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 record contains three affidavits from [REDACTED].² The affiant states that he has known the applicant since January 25, 1981 when he met him at an airport in New York. The affiant states that the applicant resided with him at [REDACTED] in Staten Island, New York from January 1981 for the duration of the requisite period.

The applicant has submitted two affidavits from [REDACTED]. The affiant states that he knew the applicant in Nigeria and met the applicant in the United States at a church in Brooklyn in June 1981. The affiant states that the applicant lived at [REDACTED] in Staten Island, New York from January 1981 for the duration of the requisite statutory period.

The record contains the affidavit of [REDACTED]. The affiant states that he and the applicant had lunch together on December 5, 1981 at the affiant's residence. The affiant states that the applicant resided lived at [REDACTED] in Staten Island, New York from January 1981 for the duration of the requisite period.

The applicant has submitted the affidavit of [REDACTED]. The affiant states that she first met the applicant in New York in late 1981 when the applicant was employed as a street vendor from whom she would purchase items.³ However, this application is inconsistent with the information contained in the instant I-687 application and the applicant's initial I-687 application, filed in 1991, wherein the applicant does not list employment as a street vendor during the requisite statutory period.⁴ Due to this inconsistency, this document has minimal probative value.

The record contains the affidavit of [REDACTED] who states that he traveled with the applicant to Canada on July 1, 1987 and returned with him to the United States on July 8, 1987.

The applicant has submitted the affidavit of [REDACTED]. The affiant states that the applicant has been in the United States since January 10, 1981, and that he has been friends with

² At the time of his interview, the applicant stated that [REDACTED] is his cousin.

³ An officer from United States Citizenship and Immigration Services (USCIS) attempted to verify the contents of affiant Pinckney's affidavit by contacting the affiants however, the telephone number provided by the affiant was not in service.

⁴ The instant I-687 application is missing page six. Page six requests applicants to continue their list of employment in the United States if they need additional space after reaching the bottom of page five. The AAO will adjudicate the appeal based on the evidence of record.

the applicant since January 25, 1981. However, the affiant does not state the basis for his knowledge that the applicant entered the United States on January 10, 1981, or how he met the applicant. In addition, the affiant states that he went on vacation to Canada with the applicant from July 1, 1987 until July 8, 1987.

In addition, the record contains an affidavit from [REDACTED], pastor of the Evangelical Christian Church of Brooklyn Inc. The affiant states that the applicant has been a member of the church since May 1981. However, the applicant failed to list his membership in the Brooklyn church or any other religious organization on the instant Form I-687 application.⁵ At part 31 of the application where applicants are asked to list their involvement with any religious organizations, the applicant did not list any organizations. More importantly, the affidavit does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership (4) state the address where the applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This attestation fails to comply with the cited regulation. Therefore, this attestation is of little probative value.

The record contains an employment verification letter from [REDACTED], the general manager of Haiti Observateur in Brooklyn, New York. Affiant states that the applicant worked for the company as a general worker from March 1981 through the duration of the requisite statutory period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides 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 in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true.

Furthermore, the employment verification letter of [REDACTED] fails to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and

⁵ The applicant's initial Form I-687, filed in 1991 to establish the applicant's CSS class membership, lists the applicant's membership in the Brooklyn church.

whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letter does not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to his own recollection or any records he or the company may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, this document has minimal probative value.

The remaining evidence in the record is comprised of two undated certificates, the applicant's statements, the instant Form I-687, and applicant's initial Form I-687 application, filed to establish the applicant's CSS class membership. The applicant has submitted two award certificates. One is a certificate of successful completion of a twenty-day training program presented by the Satterwhite Academy in New York, and the other is a certificate for successful completion of ten years of service presented by the human resources administration of the city of New York. Copies of undated award certificates do not establish the applicant's continuous residence throughout the requisite period.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his residence in the United States during the requisite statutory period. The record reveals that the applicant's initial I-687 application listed an entry into the United States on January 10, 1981. In the instant I-687 application the applicant lists residences and employment in the United States beginning in January 1981 and March 1981, respectively. However, at the time of his interview, the applicant stated that he first entered the United States on August 10, 1981.

The applicant's contradictions are material to his claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

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. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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.