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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED]

Office: NEW YORK

Date: JUN 02 2009

MSC-05-278-13594

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:

SELF-REPRESENTED

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, 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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was insufficient to support the applicant's claim of continuous and unlawful residence in the United States since before January 1, 1982 and throughout the requisite period. The director also determined that the applicant was not a class member since he stated during the interview and on his application that he had never left the United States during the requisite period between January 1, 1982 and May 4, 1988. The director also noted that the applicant indicated during the interview that he or his parent had never filed or attempted to file the application for temporary resident status during the original legalization period between May 5, 1987 and May 4, 1988.

On appeal, the applicant claims that the director has misunderstood his answers during the interview. He submits additional evidence.

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.

As indicated earlier, the director concluded that the applicant was not a class member. Under the CSS/Newman Settlement Agreements, if the director denies the application solely because the applicant is determined to be a non-class member, the AAO shall have no jurisdiction over the denial of the application. Further, the denial notice shall explain the reason for the denial of the application for class membership and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

Here, the director denied the application not only because the applicant was ineligible for class membership but also because the applicant had failed to submit sufficient credible evidence to show his continuous residence in the United States throughout the requisite period. Further, the director adjudicated the merits of the application and treated the applicant as a class member. Therefore, the AAO finds that the appeal for the denial of the application is properly before the AAO and not the Special Master.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided continuously in the United States since before January 1, 1982 and throughout the requisite period.

During his interview with a United States Citizenship and Immigration Service (USCIS) officer on March 15, 2006, the applicant stated that he resided in the United States continuously from August 1980 to December 1989. As evidence, the applicant submitted five affidavits from friends and relatives who live in the United States. On appeal, the applicant further submits eight affidavits from his family members who live in Canada and Guyana.

All five United States affiants claim to have known the applicant since January 1980; all state that the applicant has been residing in Brooklyn, New York, continuously since January 1980. Their statements are inconsistent with the applicant's testimony that he left the United States in December 1989 and did not return until August 1996. Further, they do not provide concrete information about the applicant's whereabouts in the United States during the requisite period. They also fail to address specifically how they first met the applicant, how they date their acquaintance with him, or offer other details about the applicant's life in the United States during the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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. The affidavits are not probative as evidence of the applicant's continuous residence in the United States since before January 1, 1982.

Similarly, the eight affidavits from the applicant's family members who live in Canada and Guyana lack probative value since the affiants fail to describe with sufficient detail what the applicant did with his time, his activities, friendships, or interaction with the community in the United States during the requisite period. Nor do they offer specific information on how the applicant supported himself financially in the United States during this period. This information is crucial considering that the applicant, based on the record, first came to the United States as a twelve-year old boy. Further, the affiants indicate that the applicant continuously resided in the United States from January 1980 through November 1986 and did not return until September 1989, inconsistent with the applicant's testimony during the interview and with the other affidavits.

Additionally, the applicant does not submit any medical or immunization records, school records, or other documentary evidence establishing his presence in the United States during the requisite period. Nor does he submit evidence from the person or persons responsible for his financial and physical well being during the requisite period. Further, the applicant's answers to the director's questions regarding his absence and his own or his parent's attempt to file the application are inconsistent with his answers on the Form I-687. His explanation on appeal that his answers were misunderstood by the director is not sufficient to resolve the inconsistencies in the record as noted by the director. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence

pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

Considered individually and together, the evidence presented does not establish that the applicant resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The noted inconsistencies in the record, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 and inconsistencies in the record, 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.