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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 06 075 11755

Office: NEW YORK

Date: JUN 12 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 Director, New York and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopens the matter sua sponte to consider evidence not previously in the record. The decisions of the director and acting chief of the AAO will be affirmed. The application will be denied.

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 provided credible evidence to establish eligibility under section 245A of the Act.

On appeal, the AAO affirmed the director's decision without consideration of the brief submitted by counsel. In his brief, counsel resubmits some of the same affidavits submitted with the appeal and other 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 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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The United States Citizenship and Immigration Services (USCIS) adjudicating officer’s notes reveal that during the Form I-687 application interview on April 26, 2006, the applicant claims to have entered the United States in 1981. The officer’s notes also state that the applicant entered Mexico by plane, traveled to Texas by truck and to New York by car. The applicant’s affidavit states that he entered the United States without inspection and resided continuously in the United States since March 12, 1981.

The applicant’s Form I-687 application indicates that the applicant entered the United States without a visa on March 12, 1981.

The record also contains a copy of the applicant’s passport, [REDACTED] that was issued at Rio de Janeiro, Brazil on April 12, 1989. The applicant obtained a multiple entry visitor’s visa to the United States on April 28, 1989. A copy of the admission stamp in the applicant’s passport establishes that

the applicant entered the United States legally as a visitor for business and/or pleasure, on May 28, 1989 at New York, New York. The applicant does not submit a copy of his previous passport or other documentary evidence that he entered the United States or Mexico prior to January 1, 1982.

The applicant submitted several affidavits from friends to establish his initial entry and residence in the United States during the requisite periods. Four of the affiants state that they first met the applicant after 1983 and do not establish the applicant's continuous residence in the United States since January 1, 1982. [REDACTED] states he has known the applicant since 1983; [REDACTED] states he met the applicant in 1985; [REDACTED] states they have been friends since 1986; and [REDACTED] states that he was introduced to the applicant in 1986/87. [REDACTED] indicates that he met the applicant in Brazil and later first saw him at a grocery store in New York in the spring of 1981. [REDACTED] states that he was the applicant's barber since 1981 in New York. All of the affidavits attest to the applicant's character but do not include sufficient detailed information about the claimed relationship of more than 25 years and the applicant's continuous residency in the United States since 1981. For instance, none of the affiants supplies any details about the applicant's life, such as, where he worked, how he spent his time and the date and manner he entered the United States. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits have not confirmed the applicant's residency in the United States prior to January 1, 1982 and throughout the requisite period.

None of the affidavits from friends 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 declarations. 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. Upon review, the AAO finds that the affidavits do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have minimal probative value in supporting the applicant's claim that he resided in the United States for the entire requisite period.

The undated letter from Shankaman Quality Cleaners signed by the manager, [REDACTED] states that the applicant living at [REDACTED] worked briefly for the company in 1982 as a cleaner and delivery man from May 1982 to September 1982. The letter does not contain any other information. The information in the employment letter is inconsistent with the information given on the applicant's Form I-687 application that states the applicant was self-employed as a dog walker from May 1981 to March 1989 and resided at [REDACTED], New York, New York. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an

applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letter does not meet the requirements stipulated in the aforementioned regulation and contradicts the information stated on the applicant's Form I-687, it will be given no weight.

In a letter dated April 25, 2007, [REDACTED] states that in 1985, the applicant applied for a single room apartment but was not accepted because there were no rooms available at that time. Mr. [REDACTED] provides no documentary evidence to substantiate his statement.

The applicant states in his affidavit that in the course of reviewing his Form I-687 application, counsel noticed several errors that may have prejudiced the proper review of his application. The errors noted by the applicant did not materially affect the decision rendered in this case.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. While the record contains some evidence of the applicant's presence in the United States during some part of the requisite period, when viewed individually and together with other evidence of record, the evidence submitted is insufficient to establish the applicant's 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 requisite period. The applicant has not established his continuous residence in the United States since prior to January 1, 1982 and throughout the requisite period.

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 decisions of the director and acting chief of the AAO are affirmed. The application is denied.