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FILE: [REDACTED]
MSC-06-059-11426

Office: NEWARK

Date: **MAR 25 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: 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. 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, Newark. 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 determined 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. The director noted that in response to the Request for Evidence, the representative from [REDACTED] stated in her letter that the applicant was in attendance at the school from 1981 to 1987. The director further noted that research showed that the Passaic Public School #9 is only from grade three thru six, and therefore, the maximum time the applicant could have spent at the school was four not six years. The director questioned how the school representative could have stated that the applicant was in attendance as a student when they stated in their letter that the school had no records of the applicant's attendance available. The director noted that the two attestations submitted on behalf of the applicant were not notarized. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts he is eligible for temporary resident status and that he has submitted all evidence that he could to substantiate his presence in the United States during the requisite periods. He submits an additional letter on appeal.

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. See 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).

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.

The applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In response to the Notice of Intent to Deny (NOID), the applicant submitted the following evidence:

- A fill-in-the-blank affidavit from [REDACTED] of Slovakia in which he stated that he has personal knowledge that the applicant was living in the United States between 1981 and 1986 based upon his contacts with the applicant during that period.
- A fill-in-the-blank affidavit from [REDACTED] of Garfield, New Jersey in which he stated that he has personal that the applicant was living in the United States between 1981 and 1986 based upon his personal contacts with the applicant during that period.

Here, the affiants fail to demonstrate their presence in the United States during the requisite period. They also fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. They fail to specify the applicant's place of residence, when and under what circumstances they met him, and the nature of their relationship with him throughout the requisite periods.

The applicant submitted a declaration in response to the NOID in which he stated that he came to the United States with his mother when he was eight years old. He further stated that his mother was working as a housekeeper and caregiver to the elderly, and that he was attending a local church school. He also stated that when his mother attempted to apply for legalization, at a time when he was 14 years old, his father wanted them to return to Slovakia and so he and his mother left the United States in September of 1987. He stated that he didn't return to the United States until after almost 25 years living in Slovakia.

The applicant was interviewed by an immigration officer on February 7, 2007 at which time he stated that he attended the Passaic Public School #9 and that the school only keeps school records for 4 to 5 years. The interviewing officer noted that although the applicant had presented some school projects from 1985, he had failed to provide report cards, class photos and photographs taken in the United States, or affidavits from classmates or friends to substantiate his claim.

The applicant was subsequently issued a Request for Evidence (RFE) in which he was asked to provide a certified letter from the Passaic School District stating that they do not keep student records for more than 5 years, affidavits from former teachers, classmates, or school administrators. The applicant was also requested to provide photos taken of him in the United States and evidence of his mother's presence in the United States during the requisite period.

In response, the applicant submitted the following evidence:

- A letter from the Passaic Public School, # 9 in which the principal stated that in regard to the applicant's attendance at the school from 1981 to 1987, the school does not have records readily available.

- A declaration from [REDACTED] in which he stated that he first met the applicant at school in 1981, and that they attended Passaic school # 9 at the same time.
- A declaration from [REDACTED] in which he stated that he was living in the United States from 1979 to 1986. He further stated that he remembers the applicant as one of his classmates at the Passaic School #9.
- A letter from [REDACTED] in which she stated that she met the applicant in the 1980's and that at that time she was working with the applicant's mother.
- Copies of six black and white photographs. The photographs are not identifiable or verifiable.
- A letter from [REDACTED] of [REDACTED] in which he stated that in the early 1980's he rented an apartment to a young woman and her young son in Passaic, New Jersey, and that the lease was in the applicant's mother's name. The declarant has failed to specify the address of the apartment leased or the nature of the lease agreement.
- A declaration form [REDACTED] in which he stated that the applicant's mother provided domestic help to him from 1981 to 1987, at which time he met the applicant.

The declarants have failed to demonstrate firsthand knowledge of the applicant's place of residence, or the circumstances relating to his entry or residency in the United States during the requisite period. They have also failed to specify the frequency with which they saw and communicated with the applicant during the requisite period. Affiants [REDACTED] and [REDACTED] fail to specify what years they attended the school or in what grades they were classmates with the applicant.

The applicant submitted a letter from [REDACTED] of [REDACTED] in which he stated that the applicant's mother was a member of the church from 1981 to 1987, and that together she and her son would attend Holy Masses regularly. This statement is inconsistent with the applicant's Form I-687 at part #31, where he was asked to list all affiliations and associations with church groups or organizations, he didn't list the church. In addition, the statement fails to conform to regulatory standards for attestations by churches or organizations. Specifically, the letter does not specify the applicant's place of residence, or establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant submitted English translated letters from the City of Bardejov in Slovakia, the Central Office of the District National Committee of Communist Party of Czechoslovakia, and the Revolution Movement Union of Bardejov in which it is indicated that the applicant's mother was granted permission to travel to the United States with the applicant on June 18, 1981, and

that the applicant's father, who stayed in Slovakia, was summoned to appear before the District National Committee on January 30, 1982 to explain why his wife had not yet returned to Slovakia. Although the documents demonstrate that the applicant's mother had permission to leave Slovakia and that she had not returned to her country by January 1982, they are insufficient to demonstrate the applicant's entry into or stay in the United States during the requisite period.

The director determined that the applicant had failed to demonstrate his continuous residence in the United States during the requisite period.

On appeal, the applicant reasserts his claimed eligibility for the immigration benefit sought.

The applicant submitted on appeal a letter dated January 18, 2007 from [REDACTED] of the Bergen County Technical Schools in which she states that she has been the applicant's teacher in ESL for the past two years and that he has made tremendous strides toward achieving greater proficiency. This declaration is dated subsequent to the requisite period and is therefore irrelevant to the applicant's eligibility claim.

In the instant case, the applicant has failed to provide evidence sufficient to overcome the grounds for denial. The unresolved inconsistencies regarding his schooling cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In addition, the declarations submitted on behalf of the applicant are lacking in detail with little probative value, and the church declaration does not conform to regulatory standards for attestations by churches.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon evidence that is lacking in detail, inconsistent with his statements, and with little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.