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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-017-10455

Office: NEW YORK

Date:

NOV 24 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: 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.

Perry Rhew
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, reopened and denied again by the Director, New York, 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 Class Membership Worksheet. The director denied the application after determining 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 the affidavits submitted on behalf of the applicant lacked specificity and were not credible, and that other evidence submitted was not amenable to verification or was inconsistent with statements made by the applicant. The director denied the application, finding that the applicant had not met his burden of proof that he was eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director's denial of the application was an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence and that the discrediting of the affiants and other evidence by the director was inappropriate. The applicant further attests to the veracity of his testimony and of the evidence he submitted. The applicant states that the affidavits submitted are credible and that the record contains sufficient documentation to establish his eligibility for temporary resident status. The applicant does not submit any new evidence 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.

As noted above, the applicant must establish that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, or until he filed or attempted to file the Form I-687 application. 8 C.F.R. § 245a.2(b)(1). Any absence from the United States during this time period must be brief, casual and innocent.

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 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, 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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence and continuous physical presence in the United States throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted a copy of an incident report dated December 1, 2007 in which he claims that miscellaneous paper work, including immigration applications were stolen. This document

is insufficient to establish what, if anything was stolen from the applicant or its relevance to the applicant's claim. Therefore, it has no probative value.

The applicant submitted the following evidence:

- A copy of rent receipts bearing the applicant's father's name, and one bearing the applicant's name and dated November 5, 1982.

Copies of two lease agreements dated November 1981 and November 1985 for the premises known as [REDACTED] in New York; the applicant signed both lease agreements.

This evidence is of little probative value. The applicant claims to have entered the United States in November 1981, at which time he was 11 years old. It is questionable that as a child the applicant would have been required to sign the lease agreements, and that the landlord would issue a rent receipt to the applicant in his name.

The applicant submitted the following employment letters as evidence:

A letter from the manager of the [REDACTED] who stated that the applicant's father was employed by the restaurant from December 1981 to February 1984, and that the applicant would often visit the restaurant.

- A letter from the manager of [REDACTED] who stated that the shop employed the applicant from February 1985 to December 1986. The manager further stated that the company records show that the applicant was residing at [REDACTED] in Brooklyn, New York during the time he was employed with the company.
- An affidavit from the manager of the [REDACTED] who stated that the restaurant employed the applicant from February 1987 to May 1988, and that during that time the applicant resided at [REDACTED] in Brooklyn, New York.

Publicly available information indicates that the [REDACTED] initially filed as a corporation in New York on April 19, 1989. In addition, the letters do not conform to regulatory standards for attestations by employers. Specifically, the letter from [REDACTED] does not specify the address(es) where the applicant or his father resided throughout the claimed employment period; the letter from [REDACTED] fails to specify any periods of layoffs, and the letter from the [REDACTED] fails to indicate whether the employment information was taken from company records. 8 C.F.R. § 245a.2(d)(3)(i). Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). As the letters do not comply with the regulation, they will be given nominal weight.

The applicant submitted the following evidence:

- A letter from [REDACTED] located at [REDACTED] in New York, bearing the applicant's father's name, and specifying that his scheduled visit with the applicant is rescheduled from February 20, 1987 to February 27, 1987. This letter suggests that the applicant and his father were not residing together in February 1987, which is inconsistent with the applicant's Form I-687 and his testimony made under oath during his immigration interview where he stated that he was home schooled by his father and that he resided at [REDACTED] from November 1981 to May 1987 with his father.
- A declaration from the representative of the Islamic Center in New Jersey who stated that the applicant and his father have been members of the Mosque since December 1981. The representative further stated that between January 1982 and June 1984, the applicant attended a religious class for which he received a certificate of completion. The declaration does not conform to regulatory standards for attestations by churches or religious organizations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during his membership, nor does it establish the origin of the information being attested to and thus its reliability. 8 C.F.R. § 245a.2(d)(3)(v).
- A letter from the assistant manager of the New York Health and Racquet Club who stated that the applicant was a member of the club from December 26, 1986 through April 2, 1987. The letter is inconsistent with the applicant's Form I-687 application at part #31 where he does not list any association or affiliation with any health club or fitness organization.

The applicant submitted affidavits from [REDACTED] and [REDACTED] (applicant's mother), and from [REDACTED] who stated that they have known the applicant to be in the United States since 1981 and 1982, respectively.

The affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the affiants' statements 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 affidavits. 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, individually and together, the witness

statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted as evidence a handwritten remittance from [REDACTED] dated September 19, 1985, a handwritten receipt from [REDACTED] dated June 8, 1982, a letter dated April 12, 1988 from [REDACTED], a copy of a receipt from [REDACTED] a copy of a statement of dental treatment, and a copy of a lab report from [REDACTED] dated March 6, 1987. As noted by the director in her decision, many of the telephone numbers were not working and the documents are thus not verifiable; therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. A review of the director's decision in this matter reveals that the director accurately set forth a legitimate basis for denial of the Form I-687 application. On appeal, the applicant has not overcome the grounds stated for the denial in the Notice of Intent to Deny or in the decision, nor has he presented additional evidence, relevant to the grounds for denial or the stated reason for appeal.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistency found in the record seriously detract 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 on documentation that is lacking in detail and that has 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 periods under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The AAO incorporates by reference the inconsistencies and inadequacies noted by the director in the NOID and the denial. 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.