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U.S. Department of Homeland Security  
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:

MSC-06-060-15396

Office: NEW YORK

Date:

SEP 21 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. 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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to submit sufficient credible evidence to prove that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States until the date of filing the application.

On appeal, the applicant contends that he has provided sufficient credible evidence to establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

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 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). 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.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States since before January 1, 1982 and throughout the requisite period.

To prove that he has resided continuously in the United States throughout the requisite period, the applicant provided five affidavits. [REDACTED] states in his affidavit that he saw the applicant and his father coming to Montreal, Canada, on January 8, 1987, and going to New York on January 10, 1987. Nowhere in his affidavit does he indicate that he knew where the applicant resided or worked in the United States during the requisite period. The affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period.

[REDACTED] asserts in his affidavit that he is aware of the applicant's continuous residence in the United States since 1981 and lists the addresses that the applicant resided during the requisite period. However, [REDACTED] fails to state with specificity how he first met the applicant in the United States, how he dates the beginning of his acquaintance with the applicant in 1981, or provide other details pertaining to the applicant's life in the United States during the requisite period. Simply listing the address or addresses at which the applicant lived during the requisite period without providing any detail about the nature of his association or friendship with the applicant does not establish that the affiant has knowledge of the facts alleged and does not establish the applicant's continuous residence in the United States since before January 1, 1982. The affidavit lacks probative value.

█ claims in his sworn statement that he first met the applicant and his father in September 1981 and that he has been a good friend of the applicant since that date. Another affiant, █ states that he grew up together with the applicant in Sri Lanka and that he frequently visited the applicant after he moved to the United States in 1983. Mr. █ additionally claims he and the applicant lived together on █ in Staten Island, New York, from 1987 to 1990. Neither describes with sufficient detail what the applicant did in the United States with his time, friendships, activities, or interaction with the community during the requisite period. Neither offers other particulars of the applicant's residence in the United during this period. To be considered probative and credible, 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. Neither affidavit is probative as evidence of the applicant's residence in the United States during the requisite period.

█ states in his affidavit that the applicant worked for him at Bahri Halal Meat as a part-time employee from June 1984 to December 1990, but he fails to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide information about where the applicant resided at the time of his employment, what his specific duties were with the company, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. The affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period.

A review of the record reveals that the applicant was about ten years of age in 1981, when he first came to the United States with his father. The director noted that the applicant submitted no school, medical, or immunization records. Nor did he provide any evidence from a responsible caregiver who cared for the applicant when he was a child. Taken individually and together, the AAO agrees with the director that the evidence submitted in this proceeding does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and that he has continuously resided in the United States throughout the requisite period.

The lack of detail in the affidavits coupled with 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, 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.