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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
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Services

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FILE:

MSC-05-298-13922

Office: ATLANTA

Date:

SEP 22 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. 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, Atlanta, 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 credible evidence to establish his eligibility for temporary resident status.

On appeal, counsel for the applicant asserts that the applicant has provided sufficient credible evidence to support his claim and application for temporary resident status. Counsel further contends the director has erroneously instructed the applicant to appeal the denial to the AAO.

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.

On appeal, counsel claims the director has erroneously instructed the applicant to appeal the director's decision to the AAO. Counsel contends the appeal should have been filed with a Special Master pursuant to the CSS/Newman Settlement Agreements. 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.

In this case, the director adjudicated the application on its merits, thereby treating the applicant as a class member. The appeal is, therefore, properly before the AAO and not the Special Master.

The sole 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 entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he filed or attempted to file the application for temporary resident status.

As evidence of his continuous residence since before January 1, 1982, the applicant submitted six affidavits. [REDACTED] the manager of Raga Restaurant, states in his affidavit that the applicant worked as a busboy and waiter at Raga from January 1981 to August 1985. [REDACTED] [REDACTED] similarly claims in his affidavit that the applicant worked as a

waiter at Tandoor Palace Restaurant between September 1985 and November 1990. This information conflicts with the affidavit from [REDACTED] General Contractor which indicates that the applicant worked as a daily painter from July 1986 to May 1990. These affidavits are not probative as evidence of the applicant's residence in the United States during the requisite period. None of the affiants mentioned above offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, none provides information about where the applicant resided at the time of employment, what his specific duties with the company were, whether or not the information was taken from official company records, and where such records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records.

[REDACTED] declares in his affidavit that the applicant is his relative and that he lived with him at [REDACTED] New York City, New York, from 1981 to November 1985. The applicant, however, listed a different home address for the same period between 1981 and 1985 in both of his Forms I-687 filed in 1991 and 2005, casting serious doubt on the veracity of the affiant's claim that the applicant lived in the United States during the period specified in the affidavit. [REDACTED] states that the applicant lived with him at [REDACTED] Boca Raton, Florida, from 1985 to 1986. This information conflicts with the previously filed I-687. Further, the 1991 and 2005 Forms I-687 do not list the same addresses where the applicant claims to have resided during the requisite period. No additional evidence or contemporaneous documentation has been submitted to resolve the conflict of information. The affidavits are not probative as evidence of the applicant's residence in the United States during the requisite period.

[REDACTED] claims in his affidavit he lived with the applicant in his New York apartment from January 1986 to December 1990, but he fails to describe with sufficient detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during the period stated in the affidavit. 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. Simply stating where the applicant lived without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not show his continuous residence in the United States throughout the requisite period.

Considered individually and together, the affidavits submitted above do not establish that the applicant entered the United States before January 1, 1982 and that he has thereafter resided continuously in the United States until he filed or attempted to file the application.

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

entire requisite period 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 inconsistencies in the record and 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.