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U. S. Citizenship and Immigration Services
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U.S. Citizenship
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Services

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FILE:

MSC 06 070 13265

Office: NEW YORK

Date:

MAR 02 2010

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, or *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 director determined that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the director erred in denying the application, and the applicant has submitted sufficient evidence to establish her eligibility for Temporary Resident Status. Counsel submits additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *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 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, 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The applicant is a native of Nigeria who claims to have resided in the United States since February 1980. She filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet on December 9, 2005.

In the Notice of Decision, dated August 2, 2007, the director denied the instant application after determining that the applicant had failed to submit sufficient evidence to establish the requisite continuous residence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not.

Contrary to her assertion, the applicant has failed to submit sufficient evidence to establish the requisite continuous residence. The applicant has provided several affidavits in an attempt to establish her continuous residence since prior to January 1, 1982. However, the affidavits lack essential details. The applicant submitted affidavits from [REDACTED]

[REDACTED] and [REDACTED] attesting to her residence in the United States during the requisite period. The affiants, however, do not provide sufficient details for their claimed relationship of over 20 years. For example, [REDACTED], attests that he first met the applicant in 1987, in Boston, Massachusetts. [REDACTED] also attests that he learned that the applicant came to the United States before 1982 when he visited the applicant's family in Lagos, Nigeria, and her family informed him that she had departed Nigeria, for the United States. [REDACTED] however, does not provide details, such as to indicate when he visited the applicant's family in Nigeria and learned that the applicant had been in the United States. It is noted that the affiant indicates that he first came to the United States in 1981, and that he first met the applicant in 1987. It is therefore, unlikely that [REDACTED] would have inquired about the applicant's whereabouts and that he was informed that she had been in the United States, in that he did not know the applicant until 1987, when he first met her in Boston. Another example, [REDACTED] attests that he has known the applicant since 1977, and that in February 1980, he visited the applicant's family in Nigeria, and he was then informed that the applicant had departed Nigeria, to live with a friend in Boston, Massachusetts. [REDACTED] also attests that when he came to the United States on business trips he would visit the applicant in Boston, and in 1985 he met her at a party in New York, but lost contact with her until 2006. Further, [REDACTED] attests that he believes that the applicant entered the United States prior to 1982 "without inspection," and resided continuously since 1981. The affiant, however, does not provide details, such as to indicate when, how frequently, and under what circumstances, he visited the applicant during his claimed business trips to the United States. As a third example, [REDACTED], attests that in April 1980, while living in Nigeria the applicant's mother informed her that the applicant had departed Nigeria, in February 1980, to live with a friend in Boston. However, [REDACTED] also attests that "based on [her] own personal knowledge" she knows that the applicant came to the United States prior to 1982; but, she does not explain how she gained that "personal knowledge." Also, the affiant does not provide details as to the applicant's residence during the requisite period and how she gained knowledge of the applicant's whereabouts during that time.

As noted above, the affidavits provided lack essential details. As such, this evidence is insufficient to establish the requisite continuous residence.

The applicant also provided several merchandise receipts and letters. These documents, however, are questionable. It is noted that the receipts are dated over a period of years, however, the handwriting appears to be the same for all the receipts. Similarly, the letters are purportedly from different persons, but, are in apparently identical handwriting.

This complete lack of reliable evidence casts doubt on whether the applicant has resided in the United States since 1980, as she claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in her testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.