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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 05 130 10589

Office: NEW YORK

Date: MAR 04 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:

SELF-REPRESENTED

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, 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 he 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, the applicant asserts that he has provided sufficient evidence to establish his continuous residence, and he is eligible for temporary resident status. The applicant does not submit additional evidence on appeal.

It is noted that on June 16, 2009, the applicant submitted a FOIA request which was processed on October 29, 2009. The applicant is, therefore, in receipt of a copy of the record of proceedings (ROP). However, the record does not reflect receipt of a brief or additional evidence since the applicant filed the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-694, on September 8, 2007. Therefore, the record must be considered complete.

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 Senegal who claims to have resided in the United States since September 1981. He 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 April 29, 2004.

In the Notice of Decision, dated July 18, 2007, the director denied the instant application because the applicant failed to establish the requisite continuous residence. The director noted that the applicant testified that since his first entry into the United States, he had not departed until August 1987, and that his wife had visited him in January 1986 and she departed the United States in March 1986, and she did not return to the United States. However, the applicant had a son born in Senegal in June 1987.

On appeal, the applicant reasserts that he has established the requisite continuous residence in the United States. The applicant also states that his wife had visited in January 1986, and she departed the United States in November 1986, and his son was born in June 1987.

It is noted that the director raised the issue of the child's birth in June 1987, in the notice of intent to deny (NOID). However, the applicant did not address the issue in his response to the NOID, and he now provides a different set of facts in an attempt to address the discrepancy surrounding the birth of his son.

At this late stage, however, the applicant cannot avoid the record he has created. As noted above, the applicant testified that since his first entry into the United States, he had not departed until August 1987; that his wife had visited him in January 1986 and she departed the United States in March 1986, and his wife did not return to the United States; and, he had a child, born in Senegal, in June 1987. This evidence, which was provided by applicant, is an indelible part of the record. As such, it cannot be purged from the record. The AAO will, therefore, examine the entire record and make its determination of the applicant's eligibility based on the entire record as constituted.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he 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 he has not.

Contrary to the applicant's assertion, the applicant has failed to submit sufficient evidence to establish his continuous residence. The evidence provided consists of notarized letters from [REDACTED] and [REDACTED], respectively. [REDACTED] attests to having met the applicant in Manhattan, NY in 1987; but, he does not indicate whether the applicant has been a continuous resident in the United States since their acquaintance. [REDACTED] also attests that after they first met in 1987, he lost contact with the applicant, and they regained contact in 1997; but, [REDACTED] does not provide details such as when in 1987 he first met the applicant; when he lost contact with the applicant; and, he does not indicate how frequently and under what circumstances he had contact with the applicant since they met in 1987. [REDACTED] attests that he met the applicant in 1981 at a wedding party in Fulton, Brooklyn, and that over the years they "lost sight of each other, but met again sometimes." [REDACTED] however, does not provide essential details, such as to indicate how he dates his acquaintance with the applicant; when he and the applicant "lost sight of each other," how frequently and under what circumstance he had contact with the applicant since their acquaintance; and whether the applicant has been a continuous resident since 1981.

These letters, therefore, lack essential details. As such, the evidence provided is insufficient to establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire 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 his 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 he 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.