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U.S. Citizenship
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Services

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FILE: [Redacted] Office: DENVER Date: APR 15 2008
MSC-05-330-10490

IN RE: [Redacted]

APPLICATION: Application for Temporary Resident Status under 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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, 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 District Director, Denver, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On August 26, 2005, 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 determined 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 applicant failed to provide sufficient evidence to prove that he was eligible for temporary resident status pursuant to 8 C.F.R. § 245a.2(d). The director further noted that, in sworn testimony, the applicant stated that he entered the United States in 1971 until 1979, when he returned to Mexico. He claimed that he kept a United States address, but that he only returned on brief visits, as he was working in Mexico as a farmer from 1979 to 1992. The applicant claimed that he married [REDACTED] in May of 1985 and that they had a daughter, [REDACTED] born in Mexico on June 4, 1988. The applicant claimed that he returned to the United States in 1992 to look for work.

The director also stated that the applicant “failed to establish that you were turned away from filing an application during the relevant time period, that is, between May 5, 1987 and May 4, 1988.” The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. While the director did refer in the decision to the applicant’s failure to establish class membership under the CSS/Newman Settlement Agreements, the director went on to adjudicate the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant submits a letter claiming that his testimony at the June 26, 2006 interview was incorrectly stated by the director in the Notice of Denial. He claims that he was living in the United States from 1979 until 1992 with his “main residence” in the United States at the addresses listed on his I-687 application, and that he left the United States and returned to Mexico to be married (May of 1985) and again when his daughter was born (June 1988). The applicant submits no additional or new evidence on appeal.

It is also noted that the applicant submitted his I-687 application under the name [REDACTED]. As evidence of his identity, pursuant to 8 C.F.R. 245a.2(d)(2) the applicant submitted a copy of his original birth certificate with accompanying English translation. The birth certificate indicates the name “[REDACTED]” and does not list a mother. The

applicant then submitted documentation that refers to [REDACTED] and [REDACTED] [REDACTED] and [REDACTED]. The record of proceeding includes an official FBI Identification Record, based upon the applicant's fingerprints, which lists the name "Sarafin [REDACTED]". Because the record of proceedings reflects four different names, the applicant has the burden of proving that he was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2). To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is "a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2). Since the applicant failed to submit any evidence that the names properly refer to him, the credibility and probative value of the evidence submitted in any name other than [REDACTED] is substantially diminished.

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 be 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. 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 periods, 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).

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 petitioner 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 in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 26, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he resided [REDACTED] e. Chicago, Illinois from June 1974 until November 1981, at [REDACTED] in Las Vegas, Nevada from November 1981 until February 1987, and at [REDACTED], Los Angeles California from March 1987 until June 1999. In Part #32 of this application, the applicant indicates that during the requisite period, he left the United States on two occasions: from February 2, 1985 until February 20, 1985 (to get married) and from June 1, 1987 until June 15, 1987 (for the birth of his daughter). He does not explain whether his wife came to the United States at the time his daughter was conceived, but does state that he did not return to Mexico during this time. The CIS officer made notations on the I-687 during the applicant's interview. Those notes indicate that the applicant explained that he "just kept a U.S. address" from November 1981 until February 1987, and that he primarily remained in Mexico during this period making only "brief" and "periodic" trips to the U.S. to work.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance

policies, receipts or letters. The applicant did not submit any contemporaneous evidence of this nature pertaining to the requisite period.

An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted the following evidence:

- The applicant submitted pay receipts, both handwritten and printed copies from Potatoes Limited, Inc. and Elixir Industries. These receipts indicate pay for the following periods: December 3, 1981 through December 16, 1981; February 21, 1982; and for various one week periods in March through September of 1987. The receipts only pertain to specific one or two week periods within the period of time that the applicant is required to establish continuous residence. For this reason, these pay stubs offer minimal evidence that the applicant resided in the United States for the duration of the requisite period.
- Four receipts, one from 1983 and three from 1985. Two of these receipts do not have the applicants name on them, or refer to the applicant in any way. Thus, they are of no probative value. The other two receipts do contain the applicant's handwritten name, however, they are nearly illegible, and do not contain dates or any other relevant information. They are also of no probative value.
- A form affidavit dated November 20, 1987 from [REDACTED] who stated that he is a citizen of the United States of America, currently residing at [REDACTED] Las Vegas, Nevada. [REDACTED] indicated that he has known the applicant since November 1981. Here [REDACTED] did not indicate where or how he met the applicant other than that they were "friends," or how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.
- A form affidavit dated November 20, 1987 from [REDACTED] a who stated that he lives at [REDACTED], Las Vegas, Nevada and has know the applicant since 1982. The affidavit also bears a stamp indicating that [REDACTED] is the Marketing Director for Potato Express Produce. [REDACTED] stated that he has known the applicant since 1982, and that the applicant was one of his employees. [REDACTED] did not provide any additional proof of his identity or his position at Potato Express nor did he indicate how frequently he saw the applicant during the requisite period, or state that he has direct, personal knowledge that the applicant continuously resided in the United States. Thus, his affidavit does little more than confirm that the applicant may have been employed by Potato Express at some point prior to November 1987.

- A form affidavit dated November 20, 1987 from [REDACTED] who stated that he is a Bookkeeper and resides at [REDACTED] Las Vegas, Nevada. [REDACTED] stated that he has known the applicant since May of 1984. [REDACTED] confirmed that he “worked with” the applicant from May 1984 until November 1987, yet he failed to provide any specific details regarding the events and circumstances of the applicant's residence in the United States. He did not indicate that he has direct, personal knowledge that the applicant resided in the United States for the duration of the requisite period. Due to the significant lack of detail, this affidavit can be given minimal weight as corroborating evidence.
- A form affidavit dated November 20, 1987 from [REDACTED] who stated that he is a Food-handling Supervisor and resides at [REDACTED] Las Vegas, Nevada. The same deficiencies discussed above also apply to this affidavit. [REDACTED] confirmed that he “worked with” the applicant from November 1984 until November 1987, yet he failed to provide any specific details regarding the events and circumstances of the applicant's residence in the United States. He did not indicate that he has direct, personal knowledge that the applicant resided in the United States for the duration of the requisite period. Due to the significant lack of detail, this affidavit can be given minimal weight as corroborating evidence.

The applicant was interviewed under oath by a Citizenship and Immigration Services (CIS) officer on June 26, 2006. The Record reflects that the applicant indicated in that interview that he entered the United States in 1971 until 1979, when he returned to Mexico. He claimed that he kept a United States address, but that he only returned on brief visits, as he was working in Mexico as a farmer from 1979 to 1992. The applicant claimed that he married Maria Mercedes in May of 1985 and that they had a daughter, [REDACTED], born in Mexico on June 4, 1988. The applicant claimed that he returned to the United States in 1992 to look for work.

In his letter in support of this appeal dated October 16, 2006, the applicant stated that his testimony at the June 26, 2006 interview was incorrectly stated by the director in the Notice of Denial. He claims that he was living in the United States from 1979 until 1992 with his “main residence” in the United States at the addresses listed on his I-687 application, and that he left the United States and returned to Mexico on two occasions, to be married (1985) and again when his daughter was born (1987). The applicant has not provided any additional or contemporaneous documentation to affirm his claims that his testimony was inaccurately documented by the director. Further, the record of proceedings contains the CIS officer’s notes, taken during the interview, which confirm the director’s description of the applicant’s testimony.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. §

245a.2(d)(6). The applicant's later assertion that his interview testimony was different than what is contained in the record of proceedings is not sufficient to meet this burden.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 upon affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687 and his interview testimony, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.