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U.S. Citizenship  
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FILE: [Redacted] Office: NATIONAL BENEFITS CENTER  
MSC-05-334-11819

Date: **APR 30 2008**

IN RE: Applicant: [Redacted]

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. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, National Benefits Center. The decision 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. 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. Specifically, the director stated that though the applicant had submitted evidence, an affidavit, in support of his application, this affidavit did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. In saying this, the director noted that this affidavit did not contain documentation identifying the affiant, proof that the affiant was in the United States during the statutory period, evidence that there was a relationship between the applicant and the affiant or a current phone number at which the affiant could be reached. 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.

On appeal, the applicant asserts that he has submitted documents requested of him for adjustment of status. He further submits a document that contains contact information for the affiant from whom he submitted a previous affidavit.

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)(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) 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).

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 or her 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 30, 2005. 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 showed his address in the United States during the requisite period to be: [REDACTED] in New York City, New York from January 1982 until February 1989. It is noted that the applicant did not indicate that he resided in the United States prior to January 1, 1982 on this form. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period.

At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he has never been employed in the United States.

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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant did not provide any documentation apart from his Form I-687 as evidence that he resided in the United States for the requisite period. The director therefore issued a Notice of Intent to Deny (NOID) on November 17, 2005. The director afforded the applicant thirty (30) days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant attempted to establish that he had maintained continuous unlawful residence in this country since prior to January 1, 1982 and through the date he attempted to file for legalization during the original filing period by submitting the following:

A notarized letter from [REDACTED] dated December 1, 2005. In this letter, [REDACTED] states that she has known the applicant since he was three years old. It is noted that [REDACTED] does not indicate where she met the applicant, nor does she assert that she personally knows that he resided in the United States continuously from a date prior to January 1, 1982 and through the date he or his parents attempted to file for legalization during the original filing period. Ms. [REDACTED] indicates that the applicant and his mother lived with her for a few years. However, she fails to indicate when these years were, or to submit proof that she herself resided in the United States during the requisite period. [REDACTED] did not state or submit proof that she had an ongoing relationship with the applicant for the duration of the requisite period. The applicant further failed to submit documents as proof of [REDACTED]'s identity with this letter. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claim that he entered the United States in 1981 and then resided continuously in the United States for the duration of the requisite period.

The director denied the application for temporary residence on August 28, 2006. In denying the application, the director stated that this letter from [REDACTED] was insufficient to establish by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he submitted documents in support of his application. He submits proof that he bought a house in 2006. He also submits a document that provides contact information for [REDACTED] and proof of her identity in the form of her Naturalization Certificate. It is noted that [REDACTED]'s Naturalization Certificate indicates that she obtained United States Citizenship on December 8, 1995. However, the applicant did not submit evidence that [REDACTED] resided in the United States during the requisite period or proof of his relationship with her during that time. Though he was afforded the opportunity to submit other documents in support of his application as described by the regulation at 8 C.F.R. § 245a.2(d)(3), he failed to do so.

In support of his application, the applicant also submitted documents showing he obtained a home loan. These loan documents show that the applicant obtained a loan to purchase a house on or around September 13, 2006. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because this document verifies the applicant's presence in the United States subsequent to the requisite time period, it is not relevant evidence for this proceeding.

In summary, the applicant has not provided any evidence that he entered the United States prior to January 1, 1982 or any evidence that lists specific dates of his residence in the United States that his relevant to the requisite period apart from his own testimony.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously detracts 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 he 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.