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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:

MSC-06-104-11249

Office: LOS ANGELES

Date:

AUG 22 2008

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 office that originally decided your case. If your appeal was sustained, or if your case 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.


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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be dismissed.

The director determined the applicant had stated under oath during his interview with a Citizenship and Immigration Services (CIS) officer on October 2, 2006, that he was absent from the United States for the purpose of getting married from July until November of 1986. Therefore, the director found the applicant failed to maintain continuous residence in the United States for the duration of the requisite period. Because the director determined that the applicant failed to meet his burden of proving that he was eligible to adjust status to that of a temporary resident, she denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant states that he interviewed by multiple individuals at the time of his interview. He states that he felt attacked by the officers at that time. He explains that though he left the United States in 1986, he was not absent for four months. He also states that he previously submitted evidence with his application that should be in his file. He requests another interview.

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 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.

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 January 12, 2006. It is noted that it appears that the immigration officer who interviewed the applicant indicated at part #14 of the application that the applicant stated that he never attempted to apply for legalization. This note is dated October 2, 2006. 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 addresses in the United States during the requisite period to be: [REDACTED] in an unspecified city in Texas from November, 1981 until April 1988; and [REDACTED] in Fontana, California from April 1988 until May 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent from the United States once during the requisite period when he went to Mexico to get married from July 1 to August 1 in 1986. Notes taken on the applicant's Form I-687 application indicate that at the time of the applicant's interview, the applicant indicated that he got married in July 1986 but did not return to the United States until November 1986. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he did not indicate that he had any employment during the requisite period. It

is noted that the applicant's date of birth is April 21, 1966. Therefore, he would have been 15 years old in 1981 when he claims to have first entered the United States and he would have remained a minor until 1984.

Also in the record are the notes from the CIS officers who interviewed the applicant. Here, the record reveals that at the time of his interview, the applicant stated that he went to Hidalgo, Mexico on June 15, 1986. The record shows that he stated both that he was absent for one month at that time and that he returned to the United States in November 1986. The record indicates that more than one officer was present at the time of the applicant's interview. The AAO further notes that the record contains a sworn statement written in Spanish. This statement is not translated into English.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

Here, the applicant submitted the following evidence that is relevant to his claim of having maintained continuous residence in the United States during the requisite period:

- An affidavit of employment that is signed by [REDACTED], who indicates that he or she is associated with [REDACTED]'s Seafood. This affidavit was notarized on July 8, 1994. The affiant states that the applicant was employed by [REDACTED] Seafood in 1981. However, the affiant does not state the duties performed by the applicant. He or she does not indicate the applicant's start and end dates associated with this employment or state how he or she was able to determine that the

applicant worked for him or her in 1981. He or she does not indicate whether the information regarding the applicant's employment was taken from official records. Further, the applicant did not indicate that he worked at [REDACTED] Seafood on his Form I-687. Because this affidavit is lacking with regards to the criteria the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment affidavits must adhere to, minimal weight can be given to this affidavit as proof that the applicant resided in the United States during the requisite period.

- An affidavit of employment from [REDACTED] that was notarized on July 8, 1994. The affiant states that the applicant worked for him in 1984. However, he does not state the duties performed by the applicant. He does not indicate the start and end dates associated with this employment of state how he was able to determine that the applicant worked for him in 1984. He does not indicate whether information regarding the applicant's employment was taken from official records. Further, the applicant did not indicate that he ever worked for [REDACTED] on his Form I-687. Because this affidavit is lacking with regards to the criteria the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment affidavits must adhere to, minimal weight can be given to this affidavit as proof that the applicant resided in the United States during the requisite period.
- An envelope that is addressed to the applicant in Fontana, California. The year that appears in the date stamp on this letter is not legible. Therefore, the AAO cannot determine if this evidence is relevant to the requisite period.
- An envelope that was sent by the applicant and was date stamped in Pasadena, Texas. The year that appears in the date stamp is not legible. Therefore, the AAO cannot determine if this evidence is relevant to the requisite period.

It is noted that the applicant also submitted evidence as proof of his residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to meet his burden of proving that he resided in the United States for the duration of the requisite period. As this evidence does not pertain to the requisite period, it is not relevant for this proceeding and is, therefore, not discussed here.

The director denied the application for temporary residence on October 2, 2006. In denying the application, the director stated that at the time of the applicant's interview, he stated that he was absent from the United States from July 1986 until November 1986. Therefore, the director found the applicant did not establish that he maintained continuous residence in the United States for the duration of the requisite period.

On appeal, the applicant asserts that he was discouraged from filing for legalization during the original filing period. He also states that he left the United States in 1986, but asserts that this absence was not for four months. Rather, he states that he married on July 19, 1986 and came back to the United States shortly after his wedding. He asserts that he previously submitted evidence in support of his application.

The AAO has reviewed the documents and other evidence in the record, including the applicant's testimony, that are relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period and has found that the applicant has failed to meet his burden of proof. Though he has submitted two affidavits of employment that are relevant to the requisite period, from [REDACTED] Seafood and from [REDACTED], these affidavits state that the applicant was employed in 1981 and 1984 respectively. Neither affidavit provides start or end dates to the applicant's employment. Neither indicates the applicant's duties associated with his employment or state whether information regarding his employment was gained after consulting official records. These affidavits do not indicate whether there were periods of unemployment that occurred while the applicant was working for either employer. As such, these affidavits are significantly lacking with regards to the criteria found in the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Further, these employment affidavits are from employers that the applicant did not state he was employed by on his Form I-687. Therefore, they do not carry sufficient weight to allow the applicant to meet his burden of proof.

The AAO finds that the record is inconsistent regarding the applicant's testimony that pertains to his absence in 1986, such that it is not clear whether he indicated that he was absent for more than or less than 45 days during the requisite period. However, regardless of whether this absence was for more than or less than 45 days, he has not submitted evidence other than his own testimony that is sufficient to meet his burden of proving that he maintained continuous residence for the duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for duration of the requisite period, as well as the inconsistencies and contradictions noted in the record, seriously 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 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.