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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 06 027 14527

Office: NATIONAL BENEFITS CENTER

Date: FEB 08 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 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Director, National Benefits Center. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status, and failed to demonstrate credibly that he was continuously physically present in the United States since November 6, 1986.

On appeal, the applicant asserted that he had continuously resided and continuously been physically present in the United States during the salient periods.

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. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

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 was 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)(A) of the Act, 8 U.S.C. § 1255a(a)(3)(A). The regulations confirm 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).

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.* 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 (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.

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.

With the I-687 application for temporary resident status the applicant submitted no evidence pertinent to his entry into the United States, his continuous residence there during any period, or his continuous physical presence there during any period.

In a Notice of Intent to Deny (NOID), dated November 22, 2005, the director noted that the applicant failed to submit evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987 and that the applicant failed to submit evidence that he was continuously physically present in the United States from November 6, 1986 to the date he filed his application as required by Section 245A(a)(3) of the Act and the regulation at 8 C.F.R. § 245a.2(b)(1). The director indicated that CIS intended, therefore, to find the applicant ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice.

In response, the applicant submitted a letter dated December 14, 2005. The applicant submitted no other evidence. The body of the applicant’s letter, in its entirety, states,

I undersigned [applicant] residing in Memphis am writing to you as requested by your services as an alien who filed an application for status adjustment know as LULAC Newman.

I had received a letter from your services dated on November 17<sup>th</sup>, 2005 requesting additional evidence to my application. As a response to your request I am not today in a position to provide you with the appropriate documentation due to the fact that the period we are referring to has been a very long time ago. I did file for an asylum here in Memphis and my status was known by the Immigration services.

In witness hereby, I [the applicant] am issuing this Motion to serve and be worth what of right.

[Errors in the original]

In the Notice of Decision, dated July 24, 2006, the director denied the application based on the reasons stated in the NOID; that is, that the applicant had failed to credibly demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987 and failed to credibly demonstrate that he was continuously physically present in the United States from November 6, 1986 to the date he filed his application.

On appeal, the applicant stated that he was unable to document his residence in presence in the United States during the salient periods because of his illegal status, and reiterated that he was unable to obtain additional evidence due to the passage of time since the salient periods.

One issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987. Another issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he was continuously physically present in the United States since November 6, 1986. In order for the application to be approved the applicant must prevail on both of those points.

The record contains no evidence pertinent to the applicant's continuous residence or continuous physical presence in the United States during the salient periods other than the applicant's own statements. The regulation at 8 C.F.R. § 245a.2(d)(6), in addressing the burden of proof in this matter, states, in pertinent part, "To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony."

The applicant failed to sustain his burden of establishing continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987, and failed to sustain his burden of establishing establish continuous physical presence in the United States since November 6, 1986 as required under Section 245A(a)(3) of the Act. The applicant is, for both reasons, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on those bases, which have not been overcome on appeal.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

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