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FILE: [REDACTED] Office: National Benefits Center Date: **FEB 11 2008**
MSC-06-070-12912

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. 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 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. 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 submitted an additional notarized letter as documentary evidence of his continuous residence in the United States during the requisite period.

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)(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.

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.* 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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 9, 2005. The applicant signed this application under penalty of perjury, certifying that the information 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 reported his first address in the United States to be in Santa Clara, California from February 1980 until October 1998. Similarly, at part #33, the applicant reported his first employment in the United States as self employed in construction in Santa Clara, California from November 1986 until October 1998. This information indicates that the applicant continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant failed to file with his application any corroborating evidence of his residence in the United States during the requisite period. The documentation provided by the applicant included the biographic page of his passport. However, this document does not relate to the applicant's residence in the United States during the requisite period. 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).

On January 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days from the date of the notice to provide further evidence in support of his application. The applicant responded to the NOID with notarized letters to establish his residence in the United States during the requisite period.

The applicant submitted a notarized "fill in the blank" letter from [REDACTED], a resident of Anaheim, California. Mr. [REDACTED] states in his letter, "I have personally known [REDACTED] since 1981. He was a good friend of our family." This document contains several apparent deficiencies. The letter lacks a phone number; hence its contents are not readily verifiable. The letter also fails to provide detailed information on how [REDACTED] met the applicant and the extent of their contact during the requisite period. Therefore, this letter can only be afforded minimal weight as corroborating evidence due to its lack of detail.

The applicant also submitted four notarized letters from the following residents of the Philippines: [REDACTED] and [REDACTED]

The authors of these letters assert that they have personal knowledge of the applicant's departure to the United States in 1980. These letters are deficient because the authors only claim to have knowledge of the applicant's departure from the Philippines. The authors do not have first hand knowledge of the applicant's actual residence in the United States during the requisite period. Therefore, these letters are also of minimal corroborating value due to their lack of detail.

In denying the application the director noted that the authors of the aforementioned letters were not present in the United States during the statutory period. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that based on the lack of evidence, the applicant failed to meet his burden of proof in this proceeding.

On appeal, the applicant furnished a letter from [REDACTED], which provides, "I have known [REDACTED] since the early part of 1980. He was then residing in [REDACTED] Sta Clara California 95054 . . . I was still then living in the Philippines . . ." However, this letter fails to overcome the director's decision because [REDACTED] was not present in the United States during the date she purportedly first met the applicant. Consequently, the document submitted on appeal fails to establish either by itself or within the totality of the circumstances that the applicant's claim is "probably true" pursuant to *Matter of E-M-, supra*. As such, this document does not satisfy the applicant's burden of proof of establishing by a preponderance of the evidence his continuous residence in the United States during the requisite period. See 8 C.F.R. § 245a.2(d)(5).

In conclusion, the absence of sufficiently detailed supporting 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 documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.