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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NATIONAL BENEFITS CENTER Date: FEB 21 2008
MSC-06-095-14325

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 furnishes additional documentation as evidence of his 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.* 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 supplement to Citizenship and Immigration Services (CIS) on January 3, 2006. The applicant signed this application under penalty of perjury, certifying that the information he provided is true and correct. Part #30 of the application requests applicants to list all of their residences in the United States since their first entry. The applicant responded to this question without providing any information on his residence in the United States during the requisite period. The applicant only reported his current address in Pontiac, Michigan as his "present" address. The applicant also failed to provide any information on his affiliations or associations with any clubs, organizations, churches or businesses in the United States. The applicant's failure to provide this information draws into question the overall credibility of his claimed residence in the United States during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted with his Form I-687 copies of his birth certificate, marriage certificate and Michigan operator's license. The applicant also submitted copies of the biographical page of his passport and his United States B1/B2 visa. While the documents submitted by the applicant

establish his identity, they do not relate to the applicant's continuous residence in the United States during the requisite period.

On February 17, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). 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 to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided 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 failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a fill-in-the-blank affidavit from The affidavit provides, "I have known since 1972. During the stated period I associated with closely. . . I have been closely associated with He/She has been my friend and we talk often and meet regularly." This affidavit is deficient because the author fails to provide detailed information on how he became acquainted with the applicant and the extent of their contact in the United States during the requisite period. Therefore, this affidavit is of minimal weight as probative corroborating evidence.

The director denied the application for temporary residence on June 21, 2006. In denying the application, the director noted that the statement from fails to attest to the applicant's entry into the United States before January 1, 1982 and residence in an unlawful status since such date. The director also noted that there is no evidence that has direct personal knowledge of the events and circumstances related to the applicant's residency during the statutory period. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that the applicant had failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserted that he would submit a brief within 30 calendar days. The applicant's Form I-694, Notice of Appeal, is date stamped as received on July 27, 2006. As of the date of this decision, the applicant has not submitted a brief. The applicant instead furnished documentation to establish the identity and residence of . The applicant submitted copies of the following documents on behalf of 1977 income tax return; 1984 real estate tax assessment; 1980 property insurance policy; and a 1980 public utility invoice.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The application of the "preponderance of the evidence" standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-,* 20 I&N Dec. 77, 80 (Comm. 1989).

Pursuant to *Matter of E-M-,* evidence submitted under Section 245A of the Act includes the completed Form I-687, Application for Status as a Temporary Resident, and any documentary evidence to support and corroborate the information contained in the Form I-687. The applicant submitted an incomplete Form I-687 application. The applicant failed to provide on this application any information regarding his residence in the United States during the requisite period. The applicant also neglected to provide any information regarding his affiliations or associations with any clubs, organizations, churches or businesses in the United States. The applicant indicated on the Form I-687 application that his date of birth is August 12, 1972, however there is no evidence that he attended school during the requisite period. Consequently, the applicant's Form I-687 application is not probative evidence of his residence in the United States during the requisite period.

The applicant submitted an affidavit from as corroborating evidence of his eligibility for temporary resident status. In determining the weight of a declaration, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the author is consistent with the other evidence in the record. *Matter of E-M-,* 20 I&N Dec.77, 81. It should be noted that with an incomplete Form I-687 application, there is no other evidence in the record with which to assess the consistency, plausibility and credibility of statement. In denying the application, the director noted that the statement from fails to attest to the applicant's entry into the United States before January 1, 1982 and residence in an unlawful status since such date. The director also noted that there is no evidence that has direct personal knowledge of the events and circumstances related to the applicant's residency during the statutory period. The applicant responded to the denial notice with documentary evidence of residence in the United States during the requisite period. However these documents do not satisfy the director's assertions. The statement from lacks significant detail on how he became acquainted with the applicant and the extent of their contact in the United States during the requisite period. Therefore, the documentation submitted on appeal does not overcome the basis for the director's denial.

In summary, the applicant has failed to provide any credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R.

§ 245a.2(d)(3). His application for temporary resident status consists of an incomplete Form I-687 application and a fill-in-the-blank affidavit that lacks considerable detail as noted. The applicant's failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

In conclusion, 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.