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U.S. Citizenship
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Services

L1



FILE: [REDACTED]
MSC 05 292 12492

Office: PORTLAND

Date: **JAN 22 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. 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, Portland, Oregon, and 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's decision was based on two determinations: 1) that the applicant failed to provide sufficient evidence to establish that he continuously resided in the United States during the qualifying period; and 2) the applicant was absent from the United States for longer than the time limits specified in 8 C.F.R. § 245a.15(c)(1). 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 his absences were brief and casual and, aside from that, that they were for emergent reasons. The applicant also claims to have additional evidence of his claimed unlawful residence and asks for additional time to gather the necessary documents.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 and May 4, 1988, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

The overall issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. The underlying issue is whether the applicant has established that he has continuously resided in the United States during the same time period. The applicant did not provide documentation in support of his Form I-687 application. The record further shows that the applicant only provided his residential addresses since July 1993 in No. 30 of the Form I-687. The applicant did not disclose any absences in No. 32 of the application.

On January 11, 2006, the director issued a notice of intent to deny (NOID), informing the applicant that he had failed to establish that he continuously resided in the United States during the requisite time

period. As such, the applicant was asked to provide additional evidence to establish eligibility for temporary resident status.

In response, the applicant provided one letter, dated December 29, 2005, from [REDACTED] verifying his father's employment as a farm laborer during the statutory time period and another letter, notarized on February 10, 2006, from an individual who claimed to have worked with the applicant's father during the statutory time period. It is noted that the employment verification letter made no mention of the applicant or his alleged residence in the United States, while the other letter only briefly mentioned the applicant as the son of an acknowledged coworker. Despite the fact that the coworker provided an address where the applicant's father resided during the claimed employment, this information cannot be verified, as the applicant did not indicate where he was residing at any time prior to July 1993.

On appeal, the applicant states that he intends to gather additional evidence, including his father's pay stubs from 1982-1985. However, the AAO notes that the employment letter previously submitted from [REDACTED] specifically stated that employment records were unavailable. The fact that the applicant now claims to have access to his father's pay stubs contradicts the statements previously made in the employment verification letter submitted in response to the notice of intent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also provides four affidavits, three of which lack probative value, as they do not address the relevant statutory time period. The remaining affidavit, dated August 3, 2006, only attests to the applicant's residence in the United States since 1985. [REDACTED] the affiant, claimed that he first met the applicant in Long Beach, California at a family function. He stated that he only kept in touch with the applicant "from time to time" and indicated that the two saw each other more frequently when the applicant moved to Oregon. The affiant did not specify the frequency of his encounters with the applicant, nor did he discuss specific events and circumstances of the applicant's life during his alleged residence in the United States. Moreover, the applicant's residence in the United States prior to 1993 cannot be verified, as this information was not provided in the Form I-687. Lastly, the notary's signature and date as well as the notary seal, which identifies the notary public, provides the notary's location and expiration of the notary's commission are all missing from this document. This deficiency gives rise to questions as to the document's validity and the identity of the affiant. Although the applicant indicated his intent to provide additional documentation regarding his residence in the United States during the requisite time period, there is no evidence that the record has been supplemented with further evidence.

Lastly, with regard to the issue of the applicant's absences, the AAO withdraws the director's determination that either of the applicant's two claimed absences was longer than the allowed 45-day time limit. While the applicant's absences may have been beyond the time period specified in 8 C.F.R. § 245a.15(c), a definite determination cannot be made without the specific dates of the absences. As the applicant did not provide this information, the only conclusion that can be reached is that the applicant failed to establish that either of his admitted absences was 45 days or less. That being said, the burden is on the applicant to establish that he has continuously resided in the United States during the designated

time period. The AAO cannot assume that the applicant's absences were within the allowed regulatory time limits without evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the applicant describes his absences as "brief, casual departures" and claims that they were "due to emergencies," he fails to document or even to describe the claimed emergencies that may have delayed his timely returns to the United States on two occasions.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has only submitted two attestations that make reference to the applicant and his residence in the United States during the statutorily relevant time period. However, as previously noted, neither attestation is sufficient to support the applicant's claim. The applicant has also failed to resolve the inconsistency regarding the existence of employment records for his father during the relevant time period.

Thus, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite time 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 failure to provide all necessary information on his Form I-687, the possibility that he may have been absent from the United States for longer than the time period allowed by regulation, and 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M*, 20 I&N Dec. 77. 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.