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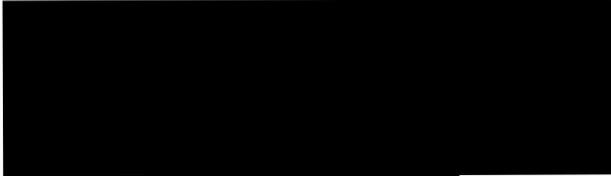
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

JUL 01 2008

MSC 06 095 10981

IN RE:

Applicant:



APPLICATION:

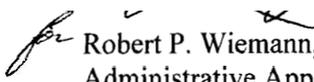
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987, to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement

On appeal, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982, through May 4, 1988. The applicant states that he has no additional evidence to provide as “many of the companies and persons that I worked in that time are not more around me in this year.” The applicant submits copies of documents that were previously provided.

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).

An applicant applying for adjustment to temporary resident status must 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A notarized affidavit from [REDACTED] of Long Beach, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based his knowledge on having repaired cars with the applicant.
- A statement from [REDACTED], who indicated that the applicant was in his employ as "a helper" doing mechanical car repairs from 1985 to 1989.
- A statement from [REDACTED], who indicated that he has known the applicant for over 20 years and that the applicant was in his employ "doing many things" including landscaping, gardening, some repairs and handyman work around his home from the summer of 1981 to 1988.
- A statement from [REDACTED], who indicated she has known the applicant for over 23 years and that the applicant worked for her family doing mechanical repairs from 1982 to 1989.
- A notarized affidavit from [REDACTED] of Los Angeles, California, who indicated that his wife introduced the applicant to him and attested to the applicant's residence in Long Beach, California from 1985 to 1990.
- A notarized affidavit from [REDACTED] of Inglewood, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based her knowledge on having utilized the applicant's mechanical services.
- An additional notarized affidavit from [REDACTED] of Los Angeles, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant asserted that she met the applicant in Guatemala and continued to visit the applicant since his arrival in the United States.
- A notarized affidavit from [REDACTED] of Culver City, California, who attested to the applicant's residence in Long Beach, California from 1981 to 1990. The affiant based his knowledge on having repaired the applicant's vehicle and maintaining a friendship since that time.

- A letter dated May 22, 2002, from [REDACTED] of Long Beach, California, who attested to the applicant's moral character for the past 17 years.
- Two envelopes postmarked in 1985 and 1986 and addressed to the applicant at [REDACTED], Long Beach, California.

The statements of the applicant regarding the amount and sufficiency of the applicant's evidence of residence have been considered. However, the evidence submitted does not establish with reasonable probability that the applicant was already in the country before January 1, 1982 and that he was residing in continuously unlawful status through May 4, 1988. Specifically:

1. Chad Smith and [REDACTED] attested to the applicant's employment from 1981 to 1988 and 1985 to 1989, respectively; however, the applicant did not claim employment with these affiants on his Form I-687 application. In addition, neither affiant provided the address where the applicant was residing as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiants also failed to 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.
2. Although item 36 of the Form I-687 application requests the applicant to list the full name and address of each employer during the requisite period, the applicant failed to provide any information.
3. [REDACTED] and [REDACTED] claim to have known the applicant for over 17 and 23 years, respectively, but provided no place of residence for the applicant or any details regarding the nature or origin of their relationships with the applicant or the basis for their continuing awareness of the applicant's residence.
4. [REDACTED] and [REDACTED] all attest to the applicant's residence in Long Beach since 1981. However, the applicant, on his Form I-687 application, did not claim residence in Long Beach until December 1983.
5. The applicant claimed to have resided in Wilmington, California from July 1981 to December 1983. However, no evidence such as a lease agreement, rent receipts, utility bills or affidavits from affiants was submitted to corroborate this residence.
6. As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the affidavits submitted.

These factors raise significant issue to the legitimacy of the applicant's residence during the period in question.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation that contains testimony that does correspond to the applicant's testimony and the fact that the applicant himself provided contradictory testimony relating to his addresses of residence and employment history all seriously undermine the credibility of his claim of residence in this country for the requisite period, as well as the credibility of the

documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 May 4, 1988 as required under section 245A(a)(2) of the Act. 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.