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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 06 006 10808

Office: FRESNO

Date: **JUL 18 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. 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, Fresno, and is now before the Administrative Appeals Office 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. Specifically, the director noted the applicant's failure to provide evidence to support his claimed residence in the United States during the statutory period and made adverse findings with regard to responses provided by the applicant at his November 6, 2006 interview with a Citizenship and Immigration Services (CIS) officer. The director ultimately 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 states that he has lived in the United States since prior to January 1, 1982, claiming that the CIS officer who conducted the interview misunderstood his responses. The applicant now claims that he entered the United States prior to January 1, 1982, not in January 1982 as stated in the director's decision.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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, 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.

The 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. In the present matter, the applicant has not met this burden. The record shows that the applicant provided no documentation in support of his Form I-687 specifically addressing the issue of his residence in the United States during the statutory time period.

Accordingly, CIS issued a notice scheduling the applicant's interview for September 27, 2006. The notice further instructed the applicant to bring additional documentation to the interview. The notice specifically requested evidence of the applicant's residence in the United States during the statutory time period. In response to the applicant's September 17, 2006 request to postpone the interview from the originally assigned date and time, CIS issued another notice informing the applicant that the new date for his interview would be November 6, 2006.

The record confirms that the interview was conducted and that the interviewer made various changes to the applicant's Form I-687 based on information provided by the applicant at his interview. It is noted that the applicant's signature establishes that he was aware of the changes that were made per his sworn testimony at the interview. The director subsequently incorporated the applicant's interview statements in the notice of denial, which was issued on November 20, 2006. Specifically, the director noted that the applicant testified that he entered the United States with his aunt and uncle in January 1982 and continued to reside in the United States continuously until 1989 at which time he returned to Mexico with his aunt and uncle until he came back to the United States alone in 1997. The director also noted the applicant's admission that he did not have proof of his residence in the United States during the statutory time period. Lastly, the director concluded that the applicant's claim that he came to the United States in January 1982

precludes the possibility that he entered the United States prior to January 1, 1982 and was residing here as of that date.

On appeal, the applicant claims that the CIS officer who conducted his interview did not properly relay the applicant's responses and further states that he told the officer that he entered the United States prior to January 1, 1982. However, the applicant has provided no evidence to support the claim that he has resided in the United States for the prescribed time period. 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)). Furthermore, the applicant's assertion that the CIS officer who conducted the interview erred in relaying the applicant's testimony is significantly compromised by the applicant's signature on the Form I-687, which shows that the changes made to the application were made with the applicant's knowledge and reflected the responses he provided at the interview. An applicant may not make material changes to an application in an effort to make a deficient application conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In summary, the applicant has not provided any evidence of residence in the United States relating to the statutory period and has further diminished the validity of his claim by altering the oral testimony given at his legalization interview on November 6, 2006. The absence of supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Thus, given the applicant's failure to provide supporting documentation, 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.