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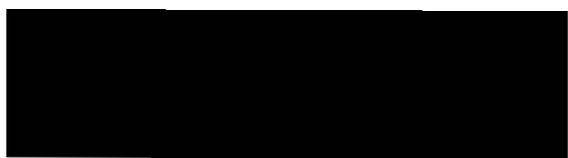
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 06 102 13752

Office: NATIONAL BENEFITS CENTER

Date: **JUL 24 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. 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

for 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, 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 found that the affidavits submitted by the applicant in support of his claim lacked probative value as the affiants failed to discuss the events and circumstances of the applicant's residence in the United States during the statutory 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 reasserts the claim that he has lived in the United States since prior to January 1, 1982 and submits two additional affidavits.

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. Here, the applicant has not met this burden. The record shows that the applicant did not support his Form I-687 with evidence establishing his residence in the United States during the statutory period. Accordingly, the director issued a notice of intent to deny (NOID) dated March 29, 2006, informing the application that the record as constituted at the time was insufficient to render a favorable finding regarding the applicant's eligibility.

In response to the NOID, the applicant provided affidavits from [REDACTED] and from [REDACTED] both dated April 25, 2006. While each affiant provided his or her own name, address, and phone number, neither provided any information regarding the applicant or his alleged residence in the United States during the statutory period. Based on these considerable deficiencies, the director determined that the applicant failed to submit sufficient documentation in support of his claimed residence in the United States during the statutory period and denied the application in a notice dated July 19, 2006.

On appeal, the applicant provided two additional affidavits, both dated August 14, 2006. One affidavit was written and signed by [REDACTED], who claimed that he met the applicant on December 25, 1981 in Somerville, Massachusetts. The affiant further stated that both he and the applicant moved to Florida where they maintained their relationship. The other affidavit was written and signed by [REDACTED] who claimed that he first met the applicant in September 1981 in Somerville, Massachusetts when the affiant was on vacation. He claimed that he and the applicant became better friends once the applicant moved to Florida. It is noted that neither affiant provided the date of the applicant's purported move to Florida, nor did either individual provide any details regarding the specific events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, the probative value of these affidavits is severely limited and they cannot serve as the basis for a favorable determination.

Furthermore, the record shows that in No. 30 of the applicant's Form I-687 where the applicant was instructed to provide a comprehensive list of his residence in the United States since his initial entry, the earliest residence provided by the applicant commenced in 2002. None of the applicant's residential or employment information as provided in the Form I-687 predates 2002. As such, none of the information provided by the above affiants can be verified with the information provided by the applicant. The applicant also provided minimal employment information in No. 33 of the application. Specifically, the earliest employment information the applicant provided dates back to December 2004. While the applicant indicated that he was self-employed prior to that time, he provided no information as to the dates, wages, location, or the type of work he purportedly performed during the statutory period.

In summary, the applicant has provided deficient evidence of residence in the United States relating to the statutory period and has completed his Form I-687 in a way that would indicate that he has not resided and worked in the United States during the statutory period.

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. As previously stated, 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). Given the applicant's deficient application as well as his 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.