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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] MSC-05-328-10757

Office: LOS ANGELES

Date: JUN 05 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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, Los Angeles. 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 failed to establish, by a preponderance of the evidence, continuous unlawful residence and physical presence during the requisite periods. The director noted that the applicant had stated in his interview with an immigration officer that he first entered the United States in January 1982. The director found this to be consistent with the information contained in the applicant's I-687 application and supporting documentation.

On appeal, the applicant disputes the director's decision and claims that he explained during his interview that he entered the United States prior to 1982.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 24, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the first period of residence the applicant listed began in January 1982. This casts doubt on the applicant's claim to have resided in the United States throughout the requisite period, and tends to show he entered the United States for the first time in 1982.

The record also includes the following documents in support of the applicant's claim of residence in the United States during the requisite period:

- Letter from [REDACTED] dated August 10, 2005. The letter states that the applicant has been a member of The Holy Family Episcopal Mission since January 6, 1982. The applicant failed to list an affiliation with this church on his Form I-687. Moreover the letter fails to conform to regulatory guidelines in that it does not state where the applicant resided during his membership period, does not establish how the author knows the applicant and does not establish the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit of [REDACTED] signed and notarized on August 10, 2005. The affiant states that he has known the applicant since June 1986. The affiant's address and phone number are not provided. A copy of the affiant's California driver's license is included. The affidavit does not indicate how the affiant met the applicant, nor does it describe his relationship with the applicant in any detail. The affidavit lacks details that would lend credibility to the affidavit. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED], signed and notarized on August 8, 2005. The affiant states that he has been acquainted with the applicant since August 1986 as a result of working together. The affiant provides his address and telephone number. The statement is accompanied by copies of the affiant's California driver license and permanent resident card. However, the affidavit lacks details of the affiant's relationship with the applicant that would lend credibility to the affidavit. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 7, 2005. The affiant states that the applicant lived with her at [REDACTED], Pacoima, CA, 91331 from January 1982 through March 1984. The statement is accompanied by copies of the affiant's California driver license and resident alien card. Given the lack of details as to how the affiant dates her initial acquaintance with the applicant, the affidavit will be given little weight.
- Affidavit of [REDACTED] signed and notarized on August 6, 2005. The affiant states that he has been acquainted with the applicant since April 1984. The affiant provides his address and telephone number. The statement is accompanied by copies of the affiant's California driver license and permanent resident card. However, the affiant fails to state how he met the applicant, or how frequently he saw the applicant during the requisite period. Therefore, this affidavit has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted photocopies of four photographs. These photographs lack any indication of where or when they were taken. Without such identifying information, the photographs have no probative value as evidence of the applicant's residence in the United States during the requisite period.

The applicant failed to submit any evidence to establish continuous unlawful residence in this country since prior to January 1, 1982. The applicant's statement on appeal that he entered the United States prior to 1982 is not sufficient to meet his burden of proof. *See* 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.").

In summary, the applicant has not provided any evidence in support of his claim of residence in the United States relating to the entire requisite 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. 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 submit any supporting documentation, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.