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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 06 097 10635

Office: TAMPA

Date:

**JUN 12 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:



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.

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

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, Tampa, and that 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 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 acknowledged that the applicant submitted an affidavit from an individual who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavit was insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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 submits new evidence, along with copies of previously submitted evidence. The applicant asserts that he has provided sufficient credible, probative evidence to meet his burden of proof.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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) 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 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. 8 C.F.R. § 245a.2(d)(5).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on January 5, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 applicant indicated that he resided at [REDACTED] San Pablo, California, from December 1980 until June 1984, and at [REDACTED], Berkeley, California from June 1984 until March 1989. Part # 33 of this application requests the applicant list his employment in the United States since his entry. The applicant indicated that he was self-employed as a helper from 1981 until June 1985.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other

organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters.

An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted the following evidence:

1. An affidavit, dated September 18, 2006 from [REDACTED] Although [REDACTED] confirmed that she met the applicant in the United States in May 1981, she did not indicate that she has any direct, personal knowledge of his continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. The affiant also failed to state how she dates their initial acquaintance. The lack of detail in her statement is significant, and its probative value is limited.

The applicant was interviewed under oath by a CIS officer on September 26, 2006. The record indicates that during that interview the applicant explained that he initially came to the United States in December 1980. He indicated that he crossed the border near Tijuana with a paid driver. Also at the interview, the applicant submitted evidence that concerned the period following the relevant time period of 1982 until 1988. This included tax returns, church records, property deeds and utility bills. The only piece of evidence that concerned the period from January 1, 1982 until May 4, 1988 was the affidavit from [REDACTED] that is mentioned above.

Citing the applicant's interview testimony and the paucity of evidence in the record, the director issued a Notice of Denial on September 28, 2006. The director acknowledged the affidavit submitted by the applicant, but noted that it was not accompanied by proof that the affiant was in the United States during the statutory period. The director advised that credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof of a relationship between the affiant and the applicant.

On appeal, the applicant submits a new affidavit from [REDACTED] dated October 24, 2006, along with additional evidence of her residence in the United States including an employment verification letter, a bank verification indicating that the affiant has held an account with the KeyPoint Credit Union since 2000, and tax records from 2005.

In the second affidavit, [REDACTED] stated that she currently lives at [REDACTED], San Jose, California. She indicated that she initially met the applicant at the Cambrian Seventh Day Adventist Church in 1981 and that they would attend church together on Saturday. She indicated that the applicant worked at various construction sites and moved frequently but that he has been

present in the United States from 1981 until present. While the affiant's statements do provide some evidence of the applicant's continuous residency in the United States, they are significantly lacking in detail which would lend credence to the applicant's claims. It is noted that the affiant stated where she first met the applicant, but did not state how she dates her acquaintance with him, or whether she has direct, personal knowledge of the address(s) at which he was residing during the critical time period between 1981 and 1988.

Further, she indicated that they met at the Cambrian Seventh Day Adventist Church in 1981, however, the applicant failed to note that he was a member of this church organization on his I-687 legalization application under Part #31 where applicants were asked to list all affiliations, associations, clubs, organizations, churches etc. This inconsistency, and the lack of detail regarding the events and circumstances of the applicant's residence is significant given the affiant's claim to have a friendship with the applicant spanning 27 years. For these reasons, this affidavit has very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiant actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 reliance upon one single affidavit 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-*, *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.