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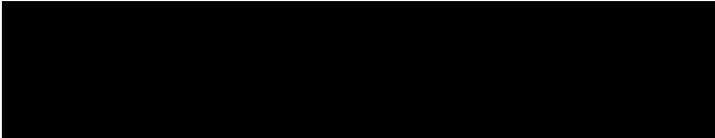
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-257-12856

Office: LOS ANGELES

Date: JUN 23 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.

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 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 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 asserts that he was confused during his interview. The applicant states that he unlawfully entered the United States in 1981.

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).

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 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.

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 applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services on June 14, 2005. The application shows that the applicant was four years old on the date of his purported entry into the United States. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at [REDACTED], Hawaiian Gardens, California from November 1981 until January 1991. At part #31 of the application where applicants are asked to list affiliations or associations with any organizations, the applicant showed that he was a member of the Saint Bonifacio Catholic Church in Anaheim, California from December 1985 until October 1989.

The applicant submitted the following documentation:

- [REDACTED] from Collect Systems Inc., addressed to the applicant’s father, [REDACTED] at [REDACTED], Hawaiian Gardens, California. The letter, dated September 1, 1986, states that it is in regard to the applicant. The letter indicates that the applicant’s father had not paid his account with Alhambra Community Hospital, located in Alhambra, California. Since the letter does not specify the date that the applicant

received medical treatment at the Alhambra Community Hospital, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period. Furthermore, this letter is of questionable authenticity because the letterhead shows the collection agency name as "Collect Systems, Inc.," while the letter shows the collection agency name as "Collectech Systems, Inc."

- A lease agreement between [REDACTED], owner of the property at [REDACTED] Hawaiian Gardens, California, and the applicant's father, [REDACTED]. The lease agreement is regarding the rental of this property for a period of one year starting on February 1, 1982. The agreement shows that the persons who resided at the dwelling included the applicant's parents, the applicant and [REDACTED]. This document is inconsistent with other evidence in the record. The applicant submitted a notarized letter, dated May 17, 2005, from [REDACTED]. This letter provides, "I, [REDACTED] disabled, with residence at [REDACTED], Hawaiian Gardens, Ca. being duly sworn . . . In 1981 [the applicant] came to live with him [sic] parents in my house, where I used to live." However, the lease agreement does not show [REDACTED] as an owner or tenant of [REDACTED]. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States from February 1, 1982 until January 31, 1983.
- A notice from the Mobile Health Van Clinic, dated October 10, 1981. The notice, regarding a skin test for Tuberculosis exposure, shows the applicant's name and date of birth. The notice instructs parents to bring their children to a clinic located in Norwalk for a skin test reading. This document is inconsistent with the applicant's Form I-687 application. The application shows that the applicant began his residence in the United States in November 1981. Therefore, this document is without any probative value as evidence of the applicant's residence in the United States in October 1981.
- A notarized letter from [REDACTED], dated May 17, 2005. This letter provides, ". . . [i]t is of my personal knowledge that [the applicant] have [sic] physically resided here in the United States since August or 1981 to present. Currently he are [sic] living at [REDACTED], Hawaian [sic] Garden [sic] CA. 90716." This letter fails to detail the origin of the information being attested to. The letter does not provide any specifics on how and where [REDACTED] first met the applicant and their contact during the requisite period. Furthermore, the letter states that the applicant has resided in the United States since August 1981, while the applicant's Form I-687 shows that he has resided in the United States since November 1981. Given these discrepancies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On November 17, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID states that the applicant failed to submit documentation to establish his

eligibility for temporary resident status. The applicant was afforded a period of 30 days to submit additional evidence in response to the NOID.

Pursuant to 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. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished 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.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted a letter from [REDACTED], Assistant Principal, Ferguson Elementary School, and a notarized letter from [REDACTED].

The letter from [REDACTED] Assistant Principal, Ferguson Elementary School, dated January 22, 1982, provides that the applicant missed elementary school on January 5, 1982 and January 6, 1982. The letter states, “[i]f you should have any questions, please feel free to contact us.” However, the letter does not provide the school administration’s address or phone number. In addition, the letter is not signed by [REDACTED] or anyone else in the school administration. It should be noted that Ferguson Elementary School is under the ABC Unified School District.¹ The academic calendar for the ABC Unified School district begins in September.² The applicant’s date of birth is January 11, 1977. Therefore, he would have been four years old at the start of the 1981 through 1982 school year. The applicant would not, at the age of four, have been eligible to begin elementary school in 1981.³ Given these deficiencies, this letter is without any probative value as evidence of the applicant’s residence in the United States in January 1982.

The notarized letter from [REDACTED] states that in 1981 the applicant resided with him at his home located at [REDACTED], Hawaiian Gardens, California. However, the applicant submitted a lease for this property, dated February 1982, which does not show [REDACTED] as an owner or tenant of the property. In addition, this letter is inconsistent with the applicant’s Form I-687. The letter states that the applicant has resided in the United States since February 1981. The applicant indicated on his Form I-687 that he began his residence in the United States in November 1981. Given these inconsistencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period.

On December 12, 2006, the director issued a decision to deny the application. In denying the application, the director found that the applicant testified under oath that the first time he entered

¹ <http://www.abcusd.k12.ca.us/index.jsp?rn=5438627>

² *Id.*

³ *Id.*

the United States was in May 1982. The director noted that the applicant signed a sworn statement confirming this information. The director determined that the applicant failed to submit documentary evidence to establish that he has continuously resided in the United States in an unlawful status for the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that during his interview the officer tried to confuse him. The applicant states that he has evidence on file that he entered the United States in February 1981. The applicant states that during the interview he testified that he entered the United States in 1982 because this answer was suggested to him by the interpreter. The applicant asserts that he did not have the opportunity to testify to the correct date of his first entry into the United States. The applicant resubmits as corroborating evidence the letter from [REDACTED]

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The evidence produced by the applicant is either of no probative value or, at best, of little probative value. In addition, the applicant has given inconsistent testimony regarding the date of his first entry into the United States. The applicant indicated on his Form I-687 application that he first entered the United States in November 1981. During the applicant's interview, he gave sworn testimony that he first entered the United States in May 1982. On appeal, the applicant asserts that he first entered the United States in February 1981. These inconsistencies undermine the applicant's credibility as well as the claim of his continuous residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.