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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-06-059-11099

Office: NEW ORLEANS (FORT SMITH)

Date: JUN 30 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.

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, New Orleans. 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, on November 28, 2005 (together, the I-687 Application). 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 noting that, during the interview, the applicant stated that he first entered the United States in 1988. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and additional evidence. On the Form I-694, the applicant states that he has been in the United States “since [he] was 12 years old.” He states that his parents registered him under the “old legislation of 1986 without receiving any answer.” He also states that he has been in the United States from November 6, 1986 through the date that the application was filed. The applicant asks that his application be reconsidered. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (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 entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on November 28, 2005. At part #30 of the Form I-

687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as Glendale, Arizona, from 1988 to 1992. At part #33, where applicants are asked to list all employment in the United States, the applicant wrote "n/a." At part #32, the applicant wrote "n/a" with regard to absences from the United States.

The applicant has provided several letters; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; copies of the applicant's daughters' birth certificates; a copy of the applicant's Arkansas driving record dated January 4, 2000; a copy of the applicant's employment authorization card issued on December 16, 2005; a copy of the applicant's social security card; a copy of the applicant's Mexican voter registration card; a copy of the applicant's Arizona identification card issued on October 5, 1992; a copy of the applicant's Arkansas driver's license issued on May 11, 2004; copies of the applicant's undated A.S.A.P. Services Incorporated picture identification cards; a copy of the applicant's auto insurance policy issued on September 3, 2002; copies of the applicant's Internal Revenue Service (IRS) Forms W-2 for 1995, 1996, 1997, and 1999; and a copy of the applicant's IRS Form 1040 for 1997. The applicant's birth certificate, employment authorization card, Arizona identification card, Arkansas driver's license, and social security card are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite time period. The following evidence relates both to the requisite period and to subsequent years:

- An unnotarized letter from [REDACTED] dated November 10, 2005. The declarant states that he has known the applicant and his family "for many years." The declarant describes the applicant as a "good friend." Although the declarant states that he has known the applicant "for many years," the statement does not supply enough details to lend credibility to a relationship with the applicant. The declarant does not indicate when he met the applicant, under what circumstances he met the applicant, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An unnotarized letter from [REDACTED] dated November 1, 2005. The declarant states that he has known the applicant "since childhood." The declarant adds that the applicant "has never been in trouble with the law." Although the declarant states that he has known the applicant "since childhood," the statement does not supply enough details to lend credibility to a relationship with the applicant. The declarant does not indicate when he met the applicant, under what circumstances he met the applicant, how he dates

his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter from Thurman G. Smith Elementary School dated November 3, 2005 and signed by [REDACTED], principal. The letter states that [REDACTED], the applicant's daughter, has been enrolled "since August 19, 2005." This letter does not address the applicant's date of entry into the United States or the time period that he resided in the United States. Given these deficiencies, this statement has no probative value in supporting a claim that the applicant entered the United States in 1981 and resided in the United States for the entire requisite period.
- A letter on St. Raphael Catholic Church in Springdale, Arkansas dated November 2, 2005 and signed by [REDACTED], pastor. The applicant's name and an address not included in the Form I-687 are listed on the church's letter. The letter states that the applicant "has been a member in good standing of this parish since March 28, 2003." The AAO notes that the applicant failed to list an association with St. Raphael Catholic Church on the Form I-687. Moreover the letter fails to conform to regulatory guidelines in that it does not establish how the author knows the applicant, or state the origin of the information provided. *See* 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, this letter does not address the applicant's date of entry into the United States or the time period that he resided in the United States. The letter has no probative value for these reasons.
- A letter from American International Insurance dated November 7, 2005 and signed by [REDACTED], clerk. The letter states that the applicant has been insured from March 3, 2003 to the present. This letter does not address the applicant's date of entry into the United States or the time period that he resided in the United States. Given these deficiencies, this statement has no probative value in supporting a claim that the applicant entered the United States in 1981 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. In addition, the AAO notes that the applicant's statement with respect to his employment history in the Form I-687 is inconsistent with documents in the record of proceeding including IRS Forms W-2 for 1995, 1996, 1997, and 1999 and IRS Form 1040 for 1997. Moreover, none of the addresses listed on the Forms W-2 or on the applicant's Arizona identification card are included in the Form I-687. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in 1988, when he was "12 years old," without inspection. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

Finally, a Federal Bureau of Investigation (FBI) report dated June 5, 2006, states that the applicant was arrested by the Springdale Police Department on July 10, 2003. The applicant was charged with and convicted of filing a false report of criminal wrongdoing, was fined \$500 and given one year probation. This conviction appears to be a misdemeanor under state law.¹ Pursuant to 8 C.F.R. § 245a.18(a)(1), three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. However, there is no evidence in the record of proceeding that the applicant has been convicted for three misdemeanor offenses. This conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The director denied the application for temporary residence on September 30, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. In addition, the director noted that during the interview the applicant stated that he first entered the United States in 1988. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that he has been in the United States "since [he] was 12 years old." He states that his parents registered him under the "old legislation of 1986 without receiving any answer." He also states that he has been in the United States from November 6, 1986 through the date that the application was filed. The applicant asks that his application be reconsidered. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

¹ Applicant denied ever having been arrested at his interview on September 27, 2006. As the application will be denied on other grounds, the AAO will not address this issue.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 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.