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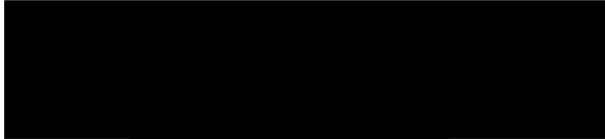
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-224-10040

Office: LOS ANGELES

Date: **MAR 03 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. 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 "R. 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, 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 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. The director also identified inconsistencies between the applicant's statements in his Form I-687 application and the statements he made in his interview with an immigration officer.

On appeal, the applicant stated that his old age and problems with his memory caused him to be extremely nervous in his interview, so he made some mistakes with dates.

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.

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 Supplement to Citizenship and Immigration Services (CIS) on May 12, 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 applicant listed the following addresses during the requisite period: [redacted] Burbank, California from July 1980 to December 1984; and [redacted] Burbank, California from January 1985 to June 1989. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed a visit to Mexico for a family emergency from July 1, 1987 to July 25, 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Self-employ[ed] as a jornalero [(day laborer)] from 1980 to December 1984; and a dishwasher for Cafe Frances in Toluca Lake, California from January 1985 to April 1998.

The applicant provided multiple attestations in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982. The applicant provided nearly identical affidavits from [redacted] and [redacted]. These affidavits are inconsistent with the

information listed on the applicant's Form I-687 because they indicate that the applicant lived at [REDACTED] from 1981 to 1995, rather than that the applicant moved to [REDACTED] in January 1985 as indicated on the Form I-687. This inconsistency calls into question the affiants' ability to confirm the applicant's residence in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] in which the affiant stated that the applicant arrived at the affiant's house at [REDACTED] on March 15, 1981 and was living with the affiant for two years. This information is inconsistent with the applicant's Form I-687, which indicates that the applicant began living at [REDACTED] in July 1980 rather than in March 1981 as indicated in the affidavit. This inconsistency calls into question the affiant's ability to confirm the applicant's residence during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that the affiant knows the applicant since 1981 because he was one of the affiant's neighbors who lived at the same apartments when the affiant lived at [REDACTED]. This affidavit fails to confirm that the applicant resided in the United States at any time other than sometime in 1981.

Similarly, the affidavit from [REDACTED] states that the affiant has known the applicant since 1982. The affiant met the applicant at [REDACTED], where the applicant used to live. The affiant was introduced to the applicant by common friends who lived next door to the applicant. This affidavit fails to specifically confirm that the applicant resided in the United States at any time other than sometime in 1982.

The applicant provided an affidavit from [REDACTED], who stated that he has known the applicant since 1982. The affiant also stated that the applicant came to work for the affiant occasionally. Because it fails to specify the dates during which the applicant worked for the affiant, this affidavit fails to specifically confirm that the applicant resided in the United States during the requisite period.

The affidavit from [REDACTED] dated September 8, 2004 states that the affiant has been acquainted with the applicant in the United States in Burbank, California from February 1981 to the present. It is noted that the applicant indicated on Form I-687 that he moved from Burbank, California in June 1989. Therefore, the affidavit is inconsistent with the Form I-687 in that the affidavit indicates the applicant resided in Burbank, California until at least September 8, 2004. This inconsistency casts doubt on the affiant's knowledge of the applicant's activities and, as a result, casts doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] in which he stated that the applicant has resided in the United States since before 1982. This affidavit is undated. Therefore, the affidavit fails to confirm that the applicant resided in the United States at any time other than at some time before 1982.

The applicant provided a Form W-2 from 1980 listing his name. Since this form lists a Mexican address for the applicant, it tends to show that the applicant did not reside in the United States during 1980 but was present as a temporary worker sometime in 1980.

The applicant provided multiple envelopes that contain illegible postage cancellation date stamps, and a receipt for a money order that contains an illegible date. These documents carry no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided multiple contemporaneous documents that are inconsistent with the information listed on his Form I-687. Specifically, these documents indicate that the applicant resided at [REDACTED] address after December 1984, although the applicant's Form I-687 indicates that the applicant moved away from this address in December 1984. These documents include certified mail receipts dated October 28, 1985; December 16, 1985; and June 16, 1986; envelopes with postage cancellation date stamps of September 3, 1985; and February 1986; and a money order receipt dated October 28, 1985. The inconsistencies between these documents and the Form I-687 cast doubt on the documents' authenticity and on the applicant's claim to have resided in the United States continuously throughout the requisite period.

The applicant also provided contemporaneous documents tending to show that he resided in the United States starting in 1985. This includes pay stubs from 1985, May 1986, September 1986, and February 1987; a Form W-2 from 1986; certified mail receipts from January 9, 1987, January 22, 1988, and October 28, 1988; medical documentation for the applicant from April 29, 1988; and an envelope with a postage cancellation date stamp of October 1986. The applicant also provided a statement from the Social Security Administration indicating the applicant earned wages with Cafe Francais Inc. in Santa Monica, California every year from 1985 to 1996.

The record also includes a Form I-687 application signed by the applicant on July 30, 1990. At part #33 where applicants were asked to list all addresses since first entry, during the requisite period the applicant listed only [REDACTED], Burbank. The applicant's failure to list any address prior to January 1985 tends to show that the applicant did not reside in the United States prior to January 1985. This information is also inconsistent with the current Form I-687 application, where the applicant indicated he lived at the [REDACTED] address prior to moving to [REDACTED]. The inconsistencies between the applicant's Forms I-687 and the omission of address information prior to January 1985 on the applicant's earlier Form I-687 casts serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application the director noted 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 also identified inconsistencies between the applicant's statements in his Form I-687 application and the statements he made in his interview with an immigration officer.

On appeal, the applicant stated that his old age and problems with his memory caused him to be extremely nervous in his interview, so he made some mistakes with dates. The applicant stated that he erroneously indicated in his interview with an immigration officer that he lived in Texas for two years, when the applicant actually only lived in Texas for two weeks. The applicant also stated that he went to live at [REDACTED] in Burbank in March 1981. This information is inconsistent with the current Form I-687 where the applicant indicated he moved to [REDACTED] St. in July 1980. This inconsistency calls into question the applicant's claim to have resided in the United States continuously throughout the requisite period.

In summary, the applicant has not provided any credible contemporaneous evidence of residence in the United States relating to the requisite period prior to January 1985. The applicant also provided multiple attestations that are inconsistent with the current Form I-687 or fail to confirm that the applicant resided in the United States during the requisite period. The affidavits from [REDACTED] and [REDACTED] are inconsistent with Form I-687. The affidavit from [REDACTED] fails to confirm that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] fails to confirm that the applicant resided in the United States at any time other than sometime in 1981. The affidavits from [REDACTED] and [REDACTED] fail to specifically confirm that the applicant resided in the United States at any time other than sometime in 1982. The applicant has failed to provide any credible evidence indicating that he resided in the United States continuously from before January 1, 1982 until January 1985.

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 contradictions between the applicant's oral and written statements, and given his reliance upon documents with minimal probative value to establish his residence in the United States prior to January 1, 1982, 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.