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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
MSC-05-272-14661

Office: LOS ANGELES

Date: **MAY 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 F. 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.

On appeal, the applicant asserts that his application is supported by credible affidavits sufficient to establish his presence in the United States since prior to January 1, 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).

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. *See* 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 or her 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 June 29, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following attestations:

- Declarations from [REDACTED] and [REDACTED] dated May 30, 2005. The declarations are written in similar format where the declarants stated that they have known the applicant since he was a young child, and that they personally know that he entered the United States prior to January 1, 1982, because he was brought to the states by his mother and father who were seeking medical treatment for his hearing problem. The declarants stated that they lived in Mexico during the requisite period. There is no evidence to demonstrate that the declarants had any form of face-to-face contact with the applicant during the requisite period. Because the declarations are significantly lacking in detail, they can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- Declarations from [REDACTED] and [REDACTED] dated May 30, 2005. The declarations are written in similar format where the declarants stated that they have known the applicant since 1981, and that they personally know that he entered the United States prior to January of 1982 because they met him at a hospital and that they have been friends with him ever since. Here, the declarants fail to mention that the applicant was an eight or

nine year old child when they allegedly met him, or that he was in the company of his parents or a guardian at the hospital. Although not required, there is nothing in the record to demonstrate that the declarants were present in the United States throughout the requisite period. The declarants fail to indicate the name of the hospital where they met the applicant.

- Declarations from [REDACTED] and [REDACTED]. The declarations are written in similar format where the declarants stated that they have known the applicant since he was a child in Mexico, and that they personally know that he entered the United States prior to January of 1982 because they were present in the country at the time. The declarants have failed to explain the type of relationship they had with the applicant who was eight or nine years old in 1981. Although the declarants claim that the applicant's parents initially brought him to the United States, they have failed to indicate the circumstances of how he survived as a child during the requisite period and whether he attended school. The declarants attested to the applicant's residence in the United States since 1981 however, they have failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. Because the declarations are significantly lacking in detail and in probative value, they can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- A declaration from [REDACTED] dated May 30, 2005, in which he stated that he met the applicant over 22 years ago at a park on 3<sup>rd</sup> Street and Mednic in East Los Angeles, California, with his parents. The declarant further stated that he knows the applicant entered the United States prior to January of 1982 because the applicant told him that his parents brought him through the hills. The declarant stated that he would see the applicant at the park, at parties, during family reunions and when he went grocery shopping. Here, there is no evidence to demonstrate that the declarant's statement concerning the applicant's entry into the United States is based upon his firsthand knowledge of the circumstances. Although not required, there is nothing in the record to show that the declarant himself was present in the country throughout the requisite period. This declaration is unclear as to the date the declarant first met the applicant. The first part of the declaration dated May 30, 2005, states that he first met the applicant over 22 years ago. However, the last paragraph states that he first met the applicant in 1981. Because the declaration is ambiguous, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- A declaration from [REDACTED] in which he stated that he met the applicant through his wife's cousin at a party in 1982. He further stated that he and the applicant would see each other at birthday parties and family reunions, and that they would visit and call each other on the telephone. The declarant also stated that the applicant played with his children and with his nephews. Although not required, the declarant has failed to submit evidence to show that he himself was present in the United States throughout the requisite

period. The declarant failed to acknowledge the applicant's parents or the circumstances under which he survived during his childhood in the United States, such as where he resided or whether he attended school. Therefore, this declaration can only be given minimal weight.

The applicant submitted a letter from the Los Angeles County, University of Southern California Medical Center in which the representative stated that in response to the applicant's request for medical records, the applicant was seen at the hospital more than seven years ago, and that his medical chart was no longer available for review due to the center's record keeping policy. There is no indication from the letter when the applicant was initially seen at the medical center, the frequency in which he sought medical treatment or the nature of the medical treatment. It is noted that the applicant has failed to submit copies of medical prescriptions, appointment notices, a clinic appointment book, patient histories, specialist referrals, or his medical identification card to support his claim. It is also noted that the applicant has failed to submit a statement from his mother or father attesting to medical treatment that he may have received as a child in the United States.

In denying the application the director noted that the applicant stated during his interview with an immigration officer that he entered the United States when he was eight years old, but did not have any school records or immunization records because he did not go to school. The director further noted that the affidavits submitted by the applicant are insufficient to establish the applicant's presence in the United States since prior to January 1, 1982.

On appeal, the applicant asserts that his application was supported by numerous affidavits from persons who had firsthand knowledge of his presence in the United States since prior to January 1, 1982, and that this evidence has been ignored. The applicant did not submit any additional evidence.

Contrary to the applicant's claim, he has not provided sufficient, probative evidence of residence in the United States relating to the requisite period. The applicant has failed to submit independent documentary evidence to substantiate his claim that he received medical treatment as a child in the United States. Although the applicant claims to have resided in the United States since he was eight years old, he provided neither school records nor immunization records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. The declarations are lacking in detail with respect to the declarants' relationship with the applicant as a child, and the role his parents played in being responsible for him during this period. The applicant has failed to submit additional evidence to corroborate his assertions made on appeal.

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 documents with minimal probative value, 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.