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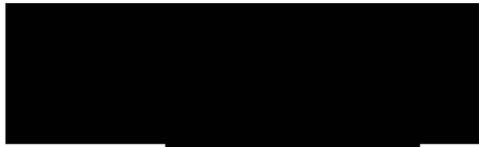
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: MSC-05-210-10528

Office: LOS ANGELES

Date: NOV 05 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. 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 cursive script, 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, 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, counsel asserts that the applicant first entered the United States without inspection on or about May 1, 1981. Counsel states that the applicant has resided continuously in the United States from May 1, 1981 through May 4, 1988.<sup>1</sup> Counsel states that the applicant is a person of good moral character and has never been convicted of a crime. Counsel states that the applicant speaks perfect English and has demonstrated basic citizenship skills during his interview. Counsel asserts that the applicant's marriage in Mexico and the birth of his children in Mexico do not discount the fact that he entered the United States in 1981 and has resided continuously in the United States throughout the requisite period.

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.

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<sup>1</sup> Counsel erroneously cites to the provisions for "LIFE Legalization" under Section 1104 of the Legal Immigration Family Equity (LIFE) Act.

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 April 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 showed that during the requisite period he resided at: [REDACTED], [REDACTED], Santa Monica, California from April 1981 to May 1985 and [REDACTED], Los Angeles, California from May 1985 to June 1992. At part #33, he showed his first employment

in the United States to be for West Virginia Restaurant in Santa Monica, California from May 1981 to 1982; Gingerman Restaurant in Beverly Hills, California from 1982 to 1984; and Southland Plastering in San Fernando, California from 1984 to 1992.

The applicant submitted the following documentation:

- A letter, dated July 9, 2002, from H. Loya, ITC, LAC+USC (Los Angeles County and USC Medical Center) Healthcare Network. [REDACTED] states that according to official medical records of the Department of Health Services, County of Los Angeles, the applicant was seen at LAC+USC Medical Center on October 22, 1982 and November 28, 1986. This document is of some probative value as evidence of the applicant's residence in the United States in October 1982 and November 1986.
- A copy of the applicant's California Identification Card issued by the California Department of Motor Vehicles on July 7, 1987. This card shows the applicant's address as [REDACTED] Los Angeles, California. The applicant's Form I-687 shows that he resided at this address from May 1985 to June 1992. This card is of high probative value as evidence of the applicant's residence in the United States in July 1987.
- Front and back copies of six photographs. The photos feature a man standing near a beach, outside a house and next to a car. The backsides of three of the photos are date stamped August 1983; the backside of one photo is date stamped September 1983; and the backsides of two photos are date stamped September 1984. The copies of the photos are a bit blurred, but presumably the person featured in the photos is the applicant. However, the applicant has not identified the location of where the photos were taken. Therefore, it is unknown whether the photos were taken in the United States or abroad. Given this deficiency, these photos are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On November 20, 2006, the director issued a Notice of Denial to the applicant. The director determined that the applicant had a single absence from the United States that is in excess of 45 days. In making this determination, the director noted that the applicant testified that he traveled to Mexico in May 1982 for four weeks and October 1987 for six months. The director noted that the applicant's evidence reveals that he registered his marriage and the birth of his children in Mexico on January 17, 1985 and February 26, 1987 respectively. The director determined that the applicant failed to establish continuous unlawful presence in the United States since prior to January 1, 1982 through May 4, 1988. The director concluded that the applicant failed to meet his burden of proof by a preponderance of the evidence that he is eligible for temporary residence.

While the director was correct in her overall decision to deny the application, there are a few errors in her analysis. The director asserted that the applicant's evidence reveals he registered his marriage and the birth of his children in Mexico on January 17, 1985 and February 26, 1987

respectively. The record shows that the applicant furnished his marriage certificate (Acta De Matrimonio) and Birth Certificates for three of his children (Acta De Nacimiento). However, the record does not contain certified English translations of any of these documents. Because the applicant failed to submit certified translations of the documents, the AAO cannot issue a finding on this issue. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the director's determination that the applicant was in Mexico on January 17, 1985 and February 26, 1987 is withdrawn from the record.

Additionally, the director asserted that the applicant was outside the United States in October 1987 for six months. The director determined that based on this absence, the applicant failed to establish continuous unlawful presence in the United States since prior to January 1, 1982 through May 4, 1988. However, January 1, 1982 through May 4, 1988 is not the requisite period at issue in this proceeding. Under section 245A of the Act, 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 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). Under the CSS/Newman Settlement Agreements, the term "until the date of filing" 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 record does not reveal the date the applicant attempted to file or was caused not to timely file a Form I-687 application during the original legalization application period. Consequently, the AAO cannot issue a finding on whether the applicant's absence from the United States in October 1987 is a break in his continuous unlawful residence. Accordingly, this part of the decision is also withdrawn from the record. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, counsel asserts that the applicant first entered the United States without inspection on or about May 1, 1981. Counsel states that the applicant has resided continuously in the United States from May 1, 1981 through May 4, 1988.<sup>2</sup> Counsel states that the applicant is a person of good moral character and has never been convicted of a crime. Counsel states that the applicant speaks perfect English and has demonstrated basic citizenship skills during his interview.

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<sup>2</sup> Counsel erroneously cites to the provisions for "LIFE Legalization" under Section 1104 of the Legal Immigration Family Equity (LIFE) Act.

Counsel asserts that the applicant's marriage in Mexico and the birth of his children in Mexico do not discount the fact that he entered the United States in 1981 and has resided continuously in the United States throughout the requisite period.

Counsel filed the appeal notice on February 1, 2007 and indicated that he would submit a brief within 30 calendar days. However, the AAO did not receive a brief or any additional evidence within this 30 day period. On October 18, 2007, the AAO sent a notice to counsel requesting him to submit his brief and/or additional evidence within five business days. As of the date of this decision, counsel has not responded to this notice.

The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he provided sufficient evidence to establish that he has resided in the United States during the entire requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). As corroborating evidence, the applicant furnished photographs date stamped August 1983, September 1983 and September 1984. However, the applicant failed to identify the person featured in the photos and the location of where they were taken. As such, they are without any probative value as evidence of his residence in the United States. The applicant also furnished a letter from the LAC+USC Healthcare Network, stating that he was seen at the medical center on October 22, 1982 and November 28, 1986, and a copy of his California Identification Card, issued on July 7, 1987, showing his residence as [REDACTED], Los Angeles, California. These documents are probative evidence of the applicant's residence in the United States in October 1982, November 1986 and July 1987. However, such evidence does not cover the entire requisite period. Thus, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the entire 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 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 he 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.