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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC-06-054-10738

Office: HOUSTON

Date: NOV 06 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

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 Director, Houston. 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 is submitting additional letters from individuals that can attest to his presence in the United States for the requisite period. Counsel requests CIS to again contact the individuals who have authored the aforementioned supporting statements. Counsel states that the applicant has been consistently truthful about the information he has provided to CIS. Counsel states that the applicant is admissible to the United States. Counsel asserts that the applicant's testimony and supporting documentation is sufficient to meet the preponderance of the evidence standard to establish his continuous residence in the United States during 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. 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 November 23, 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 he has resided in Houston, Texas since January 1981. At part #33, he showed that during the requisite period he was employed with Sak-N-Save store in Houston, Texas from 1981 until 1985 and with Fiesta Mart in Houston, Texas from 1985 until 1992.

The applicant submitted the following documentation:

- An undated affidavit from [REDACTED]. Mr. [REDACTED] states in his affidavit that he has known the applicant since October 1982 and they worked together for four years. However, the affidavit fails to indicate the dates and location of this employment. Additionally, the affidavit does not convey how and where the [REDACTED] first became acquainted with the applicant. Nor does it indicate how the [REDACTED] dated his initial contact with the applicant.

Furthermore, the affidavit offers no details on the frequency of [REDACTED]'s contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- Similar handwritten affidavits from [REDACTED] g and [REDACTED]. These individuals state in their affidavits that they have known the applicant since 1982. These affidavits do not convey how and where the affiants first became acquainted with the applicant. Nor do they indicate how the affiants dated their initial contact with the applicant. Furthermore, the affidavits offer no details on the frequency of the affiants' contact with the applicant in the United States during the requisite period. Given these deficiencies, these affidavits are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A notarized letter from [REDACTED], dated November 19, 1991. Mr. [REDACTED] states in his letter that he works at Sak-N-Sav. He states that in January 1981 the applicant was employed at Sak-N-Sav to clean up and mop the floors. He states that the applicant was paid cash on a daily basis. This letter fails to indicate [REDACTED]'s position at Sak-N-Sav. It is unclear whether [REDACTED] was the applicant's colleague or supervisor. The letter also fails to indicate whether [REDACTED] had first hand knowledge of the applicant's employment at Sak-N-Sav. It is unclear how he dated the applicant's initial employment with Sak-N-Sav. Furthermore, [REDACTED] assertion that the applicant's duties consisted of cleaning and mopping floors, is inconsistent with the applicant's Form I-687. The applicant indicated on his Form I-687 that he was employed as a "stocker." Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A court disposition from the District Court of Harris County, Texas (Docket # [REDACTED]). The disposition indicates that the applicant pled guilty to the offense of *Unlawfully Carrying a Weapon* and was sentenced to 30 days in the Harris County Jail. See Tex. Penal Code Ann. § 46.02 (1990). An applicant for temporary resident status must establish that he has not been convicted of any felony or three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). According to the disposition, the applicant was convicted of a Class A misdemeanor. A Class A misdemeanor under the Texas Penal Code entails a fine not to exceed \$2,000 and confinement in jail for a term not to exceed one year. Tex. Penal Code Ann. § 12.21 (1990). Pursuant to the regulation at 8 C.F.R. § 245a.1(o), this offense is defined as a misdemeanor.

The record shows that on November 22, 1991, the applicant submitted a Form I-687 for a determination of his CSS class membership. The applicant furnished with this application the aforementioned letter from [REDACTED] and an undated fill-in-the-blank form affidavit from [REDACTED]. Since the document from [REDACTED] does not show that it was sworn before a Notary Public, it will be considered a declaration for the purpose of this proceeding.

██████████ states in his declaration that to his personal knowledge, the applicant has resided in the United States at: ██████████, Houston, Texas from July 1981 until July 1985; Nevada, Texas from July 1985 until March 1986; and ██████████, Houston, Texas from January 1986 until July 1990. This information is inconsistent with the applicant's Form I-687, which shows that he resided at ██████████, Houston, Texas from January 1981 until November 1986 and 1921 ██████████ Houston, Texas from December 1986 until 1992. Mr. ██████████ also states that he first met the applicant in January 1981. He states that he met the applicant through a mutual friend while the applicant was working at a store on his mail route. Mr. ██████████ letter fails to indicate how he dated his initial acquaintance with the applicant. Furthermore, it does not indicate the frequency of their contact during the requisite period. Given these deficiencies, this declaration is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On November 1, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director stated that CIS attempted to contact ██████████ at the Sak-N-Sav phone number listed on his letter. The director stated that a store manager answered the phone and informed CIS that the applicant had only been employed at the store for two weeks. The director noted that CIS contacted the corporate office of Sak-N-Sav, but a representative was unable to locate any record of the applicant's employment. The director noted that the applicant presented no corroborating evidence of his employment at Fiesta Mart. The director stated that the applicant submitted as supporting evidence affidavits. The director noted that the affiants failed to state specifically where they know the applicant from (i.e. the United States or Mexico), and did not list their phone numbers. The director stated that the fill-in-the-blank affidavit from ██████████ is not notarized and does not contain a telephone number. The director noted that the applicant testified during his interview that he does not remember living in Nevada, Texas from July 1985 until March 1986, and he could not remember how long he has known ██████████. The director afforded the applicant 30 days to rebut and/or submit evidence supporting why his application should not be denied.

In rebuttal to the NOID, counsel asserted that the applicant first entered the United States in 1981. Counsel noted that it is very difficult for the applicant to obtain additional documentation because it has been over 25 years since he first entered the United States. Counsel asserted that the applicant's evidence and testimony are sufficient to meet the preponderance of the evidence standard to establish his continuous residence in the United States during the requisite period.

Counsel furnished the following additional documentation:

- An affidavit from the applicant, dated November 15, 2006. The applicant states in his affidavit that he first came to the United States in 1981. He states that he worked with ██████████ at Sak-N-Sav. The applicant states that he was employed at this store from 1981 to 1985. The applicant states that he does not know anyone at Fiesta Mart. The applicant states that he worked in Nevada for two weeks, but did not consider himself to have lived there.

- Notarized letters from [REDACTED], and [REDACTED] and [REDACTED]. These individuals state in their letters that they have known the applicant since 1981. The letters fail to convey how and where the authors first became acquainted with the applicant. They also do not indicate how the authors dated their initial contact with the applicant. Furthermore, the letters offer no details on the frequency of their contact with the applicant in the United States during the requisite period. Given these deficiencies, these letters are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

An affidavit from [REDACTED], dated November 9, 2006. Mr. [REDACTED] states in his affidavit that he has known the applicant since 1981. He states that the applicant was employed at Sak-N-Sav from 1981 until 1985. As with [REDACTED]'s previous statement, this affidavit fails to illustrate [REDACTED] direct personal knowledge of the applicant's employment at Sak-N-Sav. It does not show how [REDACTED] dated the applicant's employment with Sak-N-Sav. Furthermore, it does not illustrate the frequency of [REDACTED] contact with the applicant during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On February 15, 2007, the director issued a Notice of Decision to deny the application, stating the applicant furnished five affidavits (four notarized letters and an affidavit from [REDACTED]). The director stated that CIS attempted to contact the authors of these statements, but [REDACTED] and [REDACTED] and [REDACTED] did not answer the telephone. The director stated that [REDACTED] could not remember if she provided an affidavit on behalf of the applicant. The director stated that [REDACTED] indicated that she could not remember when she met the applicant, but recalled that it had been a long time. The director stated that [REDACTED] did not know where the applicant resided in 1981, the type of work he performed, and did not know his marital status. The director reiterated that the manager of Sak-N-Sav stated that the applicant had only been employed at the store for two weeks and the corporate office could not verify his employment. The director noted that the applicant provided no independent proof of his employment in Nevada. The director concluded that the applicant failed to establish that he is qualified for temporary resident status.

On appeal, counsel asserts that the applicant is submitting additional letters from individuals that can attest to his presence in the United States for the requisite period. Counsel requests CIS to again contact the individuals who have authored the aforementioned supporting statements. Counsel states that the applicant has been consistently truthful about the information he has provided to CIS. Counsel states that the applicant is admissible to the United States. Counsel asserts that the applicant's testimony and supporting documentation is sufficient to meet the preponderance of the evidence standard to establish his continuous residence in the United States during the requisite period.

Counsel submits an affidavit from the applicant, dated March 8, 2007. The applicant states in his affidavit that he was only in Nevada for two weeks and does not consider himself to have ever resided there. The applicant requests CIS to again contact the authors of his supporting statements. The applicant states that [REDACTED] could not remember him because she is undergoing a lot of stress due to her daughter's illness. The applicant states that [REDACTED] could not remember certain information because she is getting older in age. The applicant asserts that he has always been truthful.

The applicant, through counsel, submits as additional corroborating evidence, five notarized letters. Four of these letters are not relevant to this proceeding because they do not relate to the requisite period. The one letter that does relate to the requisite period is from [REDACTED]. [REDACTED] states in her letter that she has known the applicant since 1981. She states that the applicant has worked as a roofer for the past ten years. She states that the applicant is not married and his date of birth is October 4, 1962. As with [REDACTED]'s previous letter, this letter fails to convey how and where she first became acquainted with the applicant. It also does not indicate how she dated her initial contact with the applicant. Furthermore, the letter offers no details on the frequency of her contact with the applicant in the United States during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his continuous residence in the United States during the requisite period. 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 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). The applicant submitted as evidence of his continuous residence in the United States during the requisite period, various affidavits and letters. As discussed, these documents lack significant detail on the authors' relationship with the applicant. Consequently, they are either without any probative value or of little probative value. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is, at best, of minimal probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

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.