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U.S. Citizenship  
and Immigration  
Services

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**L1**



FILE: [REDACTED]  
MSC 06 098 10863

Office: LOS ANGELES

Date: **NOV 24 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:



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.

  
John Grissom, Acting 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. In particular, the director found that the applicant had been absent from the United States more than 45 days for a single absence, and that the applicant's absences from the United States exceeded 180 days in the aggregate.

On appeal, the applicant states that he became nervous during his legalization interview and made mistakes. Specifically, the applicant stated during his interview that he went to Paraguay in April of 1988 to get married. He states, on appeal, that he was confused during the interview and that he really went to Paraguay to get married in May, and he did so on May 12, 1988, returning to the United States with a tourist visa on May 15, 1988. He then returned to Paraguay on May 22, 1988, and remained there until August 7, 1988. The applicant submitted, on appeal, a statement, a copy of his passport, a statement from his pastor, an affidavit from [REDACTED], a copy of his California driver's license, and a picture. The applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of 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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

(h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

- (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

The applicant attended a legalization interview before a United States immigration officer on October 5, 2006. During that interview the applicant testified that he entered the United States without inspection in December of 1981. He then lived in the New York area from December of 1981 until 1994, supporting himself by working different jobs and being paid in cash. The applicant testified that he left the United States in July of 1987 and traveled to Paraguay, returning in April of 1988 with a visitor's visa.<sup>1</sup> The Form I-687 submitted by the applicant is in conflict with the applicant's testimony and sworn statement, and lists a single absence from the country, that being a family visit that occurred in 1988.

The record contains further contradictory information about the applicant's departure from the United States. The record contains a second Form I-687 which was executed by the applicant on November 4, 1991, and a sworn declaration signed by the applicant on the same date. The Form I-687 and the sworn declaration executed by the applicant in 1991 states that the applicant left the United States in August of 1987 and returned that same month, and that the applicant left the United States in May of 1985, returning in June of 1985. Neither departure is listed in the current Form I-687 executed by the applicant in 2005. The 1985 departure was not noted by the applicant on the sworn declaration dated November, 1991. Neither the Form I-687 nor the sworn statement signed November, 1991 indicate the applicant's entry into the United States on May 15, 1988 as reflected on his passport.

In view of the above inconsistencies, the applicant has failed to establish continuous residence during the requisite period because he has not established that his absences from the United States did not exceed 45 days for a single absence or 180 days in the aggregate during the requisite time period. His absence from the United States from July of 1987 until May 15, 1988 exceeded, by his own admission, 45 days for a single absence and 180 days in the aggregate. While the absences listed on the Forms I-687 may not exceed the 45 days and 180 days, because this evidence conflicts with his testimony and is internally inconsistent, the AAO does not accept either the dates on the 1991 Form I-687 or the dates on the 2005 Form I-687. Further, the record does not establish that the applicant's return to the United States on May 15, 1988 after an unknown period of departure is within the time permitted for "continuous residence" due to emergent reasons. Although the term

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<sup>1</sup> The applicant's testimony is corroborated in a sworn statement given to the immigration officer and signed by the applicant on the date of his interview. The record does not contain a translation of this statement.

“emergent reasons” is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means “coming unexpectedly into being.” The applicant, in this instance, provides no evidence of emergent reasons causing any prolonged absence from the United States. The record does not establish that the absence was caused by an event which came “unexpectedly into being.” For this reason, the appeal must be dismissed.

It should further be noted that the applicant submitted numerous affidavits to establish his period of claimed continuous residence in the United States. The affidavits submitted are very general in nature and lack sufficient detail to establish that the affiants know and have, or had, an ongoing relationship with the applicant which is sufficient for the affiants to have knowledge of the applicant’s whereabouts and or personal circumstances during the requisite period. As stated earlier in this decision, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits submitted fail to provide detailed information establishing the extent of the affiant’s association or relationship with the applicant, or detailed accounts of the affiants ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period covered by the applicant’s Form I-687. To be probative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. 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 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 applicant’s reliance upon documents with minimal probative value, it is concluded that the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

Finally, the record contains contradictory information about the applicant’s arrival in the United States. In the current Form I-687 executed on December 27, 2005, the applicant states that he first resided in the United States in December of 1981. The second Form I-687, which was executed by the applicant on November 4, 1991, and a class membership form dated March, 1992, indicate that the applicant first resided in the United States in August of 1980. Several of the affidavits submitted in support of the applicant’s claim state that the affiants have personal knowledge that the applicant has lived continuously in the United States since 1980. This information is inconsistent with the applicant’s Form I-687 executed in 2005, with the applicant’s sworn written statement dated October 5, 2006, and the applicant’s testimony at his legalization interview. The AAO notes that in the 1991 Form I-687 the applicant indicated that he last entered the United States without inspection in August of 1987, while the record reflects his last entry was on August 7, 1988, when he was inspected and admitted on a tourist visa.

The inconsistencies referenced above are not explained in the record, and are material to the applicant's claim as they bear directly on his claim of continuous unlawful residence during the requisite period. The evidence provided by the applicant, therefore, is not deemed credible and is afforded little weight. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For these additional reasons, the appeal shall be dismissed.

Therefore, based upon the foregoing, 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.