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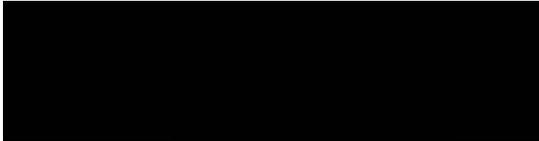
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-04-280-12554

Office: LOS ANGELES

Date: **OCT 16 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.

A handwritten signature in black ink, 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 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 noted in her decision that the applicant had failed to provide telephone numbers for the affiants as requested in the Request for Evidence. The director also noted that the applicant had failed to explain the inconsistencies in the record regarding his schooling in the United States. Specifically, the director noted that the applicant stated in a letter that he had not attended any school in the United States; however, the record of proceeding contained a letter from an adult education center which stated that the applicant attended adult education school where he took ESL classes from February 3, 1982 to November 17, 1988. The director denied the application finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that he provided all evidence as requested in the Request for Evidence and that he did not state that he never attended school in the United States. He further states that he attended adult education classes rather than regular school. The applicant does not submit any new evidence on appeal.

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.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, 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 is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on July 6, 2004.

The applicant submitted as evidence a copy of an account statement from Phoenix Company with payment dates listed for 1982 and 1983. The applicant also submitted copies of a handwritten receipt dated April 16, 1988, the applicant's California identification card issued on February 28, 1987, and pay stubs dated November and December of 1986 from D.C. Welding Company. While these documents are some evidence of the applicant's presence in the United States during the requisite period, they are insufficient to demonstrate his residence since before January 1, 1982.

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

- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant in 1981 and that the applicant is a hard working individual. He also listed Los Angeles, California as the applicant's place of residence from 1981 to 1995. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period. It is also noted that the applicant failed to provide a contact number for the affiant as requested by the director.
- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant in 1981. He also listed Los Angeles, California as the applicant place of residence from 1981 to 1995. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period. It is also noted that the applicant failed to provide a contact number for the affiant as requested by the director.
- A copy of a letter from [REDACTED] of [REDACTED]'s Maintenance Service in which he stated that the company employed the applicant as a general helper from December of

1981 to November of 1985. Here, the letter does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's place of residence during the period of employment or the number of hours worked. 8 C.F.R. § 245a.2(d)(3)(i). The declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or pay statements that pertain to the requisite period to corroborate the assertions made by the declarant. Because the letter does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- A copy of a letter from [REDACTED] of the Centinela Valley Adult School located in Lawndale, California in which she stated that the applicant attended ESL classes at the school from February 3, 1982 to November 17, 1988. Here, the letter does not comply with the Request for Evidence dated March 24, 2006, where the director requested that the applicant provide "official school transcripts" or "a letter in a sealed envelope" from the designated school to cover the years 1982 through 1988. It is also noted by the AAO that the applicant was only sixteen years old at the time that he allegedly was enrolled in adult education courses. It is further noted by the AAO that although the school representative stated in the letter that the school kept the applicant's attendance records, she failed to provide the applicant's academic or attendance records as requested. Because this letter is significantly lacking in detail, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. He has failed to submit evidence specifically requested by the director. Although the applicant claims to have resided in the United States since he was fifteen years old, he has provided neither grade school records nor immunization records to substantiate such claim. He has 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 attestations submitted are either not credible or are significantly lacking in detail and therefore, can be accorded little weight in establishing that the applicant resided in the United States throughout the requisite period.

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.