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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEW YORK Date: **OCT 24 2008**
MSC-04-304-10034

IN RE: Applicant: [REDACTED]

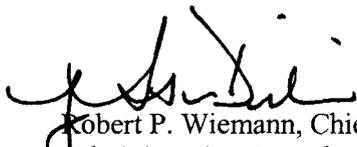
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 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, New York. 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, 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 that the applicant had failed to respond to the Notice of Intent to Deny (NOID), and that therefore, his application was being denied for the reasons stated in the NOID. The director indicated in the NOID that although the applicant stated during his interview with immigration officers that he entered the United States in December of 1980, he had failed to submit any evidence to substantiate the claim. The director also noted in the NOID that the applicant failed to submit an employment letter from Omni Parking Corporation to confirm when he worked for the company. The director determined that although the applicant had submitted a copy of his B-2 visa, tax documents, pay statements, bank statements and assorted checks to demonstrate his presence in the United States since 1987, he had failed to submit evidence to show his presence in the United States in 1983, 1984, and 1985.

On appeal, counsel asserts that neither he nor the applicant received the NOID. Counsel also asserts that after a lapse of 25 years it is hard to obtain more evidence than the applicant had already submitted. Counsel further asserts that the applicant has provided sufficient evidence, under the circumstances, to demonstrate his residence in the United States since 1980.

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 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 July 30, 2004.

In denying the application the director noted that the applicant had failed to submit evidence to support his claimed entry into the United States prior to January 1, 1982.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. He submits with his appeals copies of evidence previously provided. He also resubmits the following attestation:

- A letter dated February 2, 1982 from the supervisor of the 52 West 36th Street Parking Corporation in which he stated that the company had employed the applicant for approximately three years, and that the applicant was currently working and earning an annual gross salary of approximately \$21,000.00. The declaration is inconsistent with statements made by the applicant on his Form I-687 application at part #33 where he indicated that he had been employed by the company from 1980 to May of 1987. Based upon the declarant's statement, the applicant was employed by the company before he entered the United States. There has been no explanation given for this inconsistency. In addition, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the specific dates of employment, the address(es) where the applicant resided throughout the claimed employment period, or 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). Here, the record does not contain copies of personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the declarant. Because this letter is inconsistent with statements made by the applicant and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to overcome the grounds for the director's denial. Contrary to counsel's claim, the record of proceeding shows that the director issued a NOID to the applicant at his last known address on June 16, 2005. It is noted by the AAO that the director's final decision with respect to the Form I-687 application was sent to the same address as the NOID. Although the evidence in the record demonstrates the applicant's presence in the United States since 1988, it is insufficient to show his continuous unlawful residence in the country since before January 1, 1982.

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 that are either irrelevant to the period in question or that have 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.