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

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FILE:

MSC 06 048 12500

Office: NEWARK

Date:

**SEP 18 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:

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, Newark. 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, 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.

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 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. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

#### Affidavits

- [REDACTED] submitted a sworn affidavit wherein she states that she has personal knowledge that the applicant has resided in the United States from November of 1981 until the date of the affidavit (December 6, 2006). The affiant lists the addresses of the applicant during that period of time and states that she knows the applicant because he is the brother-in-law of her cleaning lady. The affiant provides no additional information.
- [REDACTED] submitted a sworn affidavit wherein he states that he has personal knowledge that the applicant has resided in the United States from May of 1986 until the date of the affidavit (December 6, 2006). The affiant lists the addresses of the applicant during that period of time and states that he knows the applicant because they are cousins. The affiant provides no additional information.
- [REDACTED] submitted a sworn affidavit wherein he states that he has personal knowledge that the applicant has resided in the United States from November of 1981 until the date of the affidavit (December 6, 2006). The affiant lists the addresses of the applicant during that

period of time and states that he knows the applicant because the applicant is the brother-in-law of the affiant's sister. The affiant provides no additional information.

- \_\_\_\_\_ submitted a sworn affidavit wherein she states that the applicant is her first cousin, and that she has personal knowledge that the applicant resided at her former residence in New Jersey from May of 1986 until December of 1992. The affiant provides no additional information.
- \_\_\_\_\_ submitted a sworn affidavit wherein she states that the applicant is her husband's cousin, and that she has personal knowledge that the applicant resided in New Jersey from November of 1981 until March of 1986. The affiant provides no additional information.
- \_\_\_\_\_ submitted a sworn affidavit wherein she states that she has personal knowledge that the applicant has resided in the United States from November of 1981 until the date of the affidavit (November 2, 2005). The affiant lists the addresses of the applicant during that period of time and states that she knows the applicant because he is her friend's boyfriend. The affiant provides no additional information.
- \_\_\_\_\_ submitted a sworn affidavit wherein she states that she has personal knowledge that the applicant has resided in the United States from November of 1981 until the date of the affidavit (November 3, 2005). The affiant lists the addresses of the applicant during that period of time and states that she knows the applicant because he is "my sister-in-law's husband." The affiant provides no additional information.

### Applicant Statements

- The applicant issued a sworn statement in response to the director's Notice of Intent to Deny (NOID). In that statement, the applicant states, in pertinent part, that he entered the United States without inspection at the Canadian border in November of 1981. The applicant states that he continuously resided in the United States from November of 1981 until March 25, 1986, when he traveled to the Philippines due to the death of his grandfather. The applicant states that he returned to the United States on May 5, 1986, entering the country without inspection at the Canadian border.
- The applicant issued a sworn statement on November 4, 2005 stating that he was issued a Philippine passport in April of 1986. The applicant stated that the passport was lost when he gave the passport to a paralegal who was to assist him in processing his legalization application, and the paralegal disappeared without performing the services paid for by the applicant.
- The applicant issued a notarized statement on November 8, 2005 wherein he stated, in pertinent part, that he entered the United States without inspection at the Canadian border in

November of 1981. The applicant stated that he returned to the Philippines in March of 1986 due to his grandfather's death. He further states that he returned to the United States in May of 1986, once again entering the country without inspection at the Canadian border.

Although the applicant has submitted several affidavits and his own sworn and/or notarized statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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 affidavits state generally that the affiants have knowledge that the applicant has continuously resided in the United States during the requisite period, and that the affiants are either acquaintances or family members of the applicant. The applicant's personal statements state that he has resided in the United States for the duration of the requisite period. None of the affidavits provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits and unsworn witness statements do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have little probative value.

Further, the statements of the applicant are insufficient alone to establish the applicant's continuous residence in the United States for the requisite period. As previously noted, in order 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).

#### Attestation

The applicant submitted an attestation from [REDACTED], a Parochial Vicar at St. John the Evangelist Church in Bergenfield, NJ. [REDACTED] states that the applicant has been a member of St. John Parish "from 1982 through the present" (November 4, 2005). The attestation is on the church's letterhead.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The attestation does not establish how its author knows the applicant, nor does it establish the origin of the information being attested to (i.e., the information is taken from parish membership records). The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time 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 his claim. As previously stated, 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 during the requisite period.

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.