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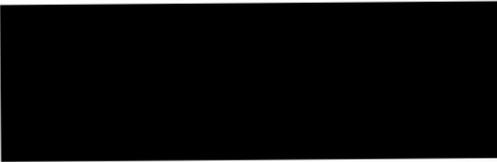
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-026-11921

Office: BOSTON

Date: SEP 25 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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. 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, Boston. 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.

The applicant is represented by counsel on appeal. Counsel argues that the documentary evidence submitted below attesting to the applicant's entry and residence in the United States is sufficient to establish his eligibility for temporary resident status pursuant to the terms of the settlement agreements.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 October 26, 2005. The applicant gives his date of birth as [REDACTED] in Sao Jose Do Jacuri, Brazil. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at [REDACTED] [REDACTED] from January 1980 to January 1991. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since first entry, the applicant stated “none.” Similarly, at part #33, the applicant stated that he has been employed at the [REDACTED] from February 1980 to the present.

The applicant submitted numerous documents in support of his application for temporary residence. The AAO observes that the majority of these documents is outside of the relevant statutory period and therefore will not be considered. In addition to the Form I-687 and the applicant’s testimony at his interview in support of his application for temporary residence, the documents relevant to the issue of entry and residence in the United States are limited to two

statements from the applicant's employer and a number of photocopies of pictures, which are discussed below.

The applicant appeared for an interview before a U.S. Citizenship and Immigration Office adjudications officer on October 31, 2006. The officer's notes from the interview reveal that the applicant, testifying with the aid of a translator, explained that he first entered the United States without inspection in January 1980 via the San Diego/Mexico border. The applicant stated that he did not attend school after his entry, and that he received medical attention only once sometime in either 1990 or 1991. The applicant also indicated that he returned to Brazil once to get married in April 1986. The AAO notes, however, that the applicant does not identify this departure on the Form I-687. The applicant explained that he only recently began filing tax returns.

The applicant has been employed by the same employer since entry. The applicant submitted a statement and a sworn declaration from [REDACTED] the owner of the Strawberry Fair Restaurant in Norwell, MA. In the sworn declaration, dated September 30, 2005, [REDACTED] states that she has known the applicant since the early 1980's and that he has been steadily employed at her restaurant for 25 years. She correctly identified the applicant's present address as [REDACTED] and his prior address at [REDACTED]. In a statement dated September 5, 2005, [REDACTED] stated that the applicant has been employed on full-time basis as a prep-cook/dishwasher since 1980, and is paid \$12.00 an hour. Lastly, the applicant submitted three photocopies of pictures of him and [REDACTED] inside what appears to be the storage area of a restaurant.

The director denied the application for temporary residence on December 26, 2006. In denying the application, the director noted that the applicant failed to provide any credible documentary evidence beyond his own assertions that he entered the United States in January 1980 and remained here for the requisite period of time. The director also noted that the applicant's only departure to Brazil in 1986 was for an unspecified length of time. Consequently, the director concluded that the applicant failed to meet demonstrate by a preponderance of the evidence that he entered the United States prior to January 1, 1982 and resided in this country for the statutory period.

On appeal, the applicant offers no additional new evidence. In place of corroborative evidence of his assertions, the applicant resubmitted the sworn declaration of [REDACTED] and additional photocopies of the pictures noted above. In assessing the evidence of record, the AAO first notes a discrepancy between the applicant's testimony at his interview, the Form I-687, and a photocopy of the marriage license regarding the actual date of the marriage. Both the testimony and Form I-687 indicate that the applicant was married in Brazil on April 20, 1986. However, the photocopy of the marriage license states that the applicant was married on April 20, 1985. This conflict remains unexplained on appeal. Second, none of the documentary evidence attesting to the applicant's employment relates to the statutory period in question. The earliest employment records date from 1990, well beyond the relevant period of time. Third, the pictures are undated, and the statements

from [REDACTED] are vague in that they only identify that she has known the applicant “since the early 1980’s.” Therefore, these documents are accorded limited probative weight.

Additionally, the AAO notes that the applicant offers no documentary evidence to confirm his earliest address, where he alleges he lived for over 10 years, at [REDACTED] despite the fact that the applicant stated on his form I-687 that he resided at this address for two significant periods of time for a total of almost 14 years.

Ultimately, the AAO notes that the employment letter offered by the applicant and signed by Ms. [REDACTED] on September 5, 2005, does not meet the regulatory requirements necessary to be accorded weight as an independently verifiable business record pursuant to 8 C.F.R. §245a.2(d)3(i). For example, the employment statement does not state whether or not the information was taken from official company records, where the records are located, and whether Citizenship and Immigration Services (CIS) officers may have access to them. If the employee payrolls are unavailable, an affidavit form letter stating that the alien’s employment records are unavailable and why such records are unavailable may be accepted. The affidavit form letter must be signed, attested to by the employer under penalty of perjury, and must state the employer’s willingness to come forward and give testimony if requested. In the matter presently before the AAO, [REDACTED] statement does not meet any of these requirements.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the statements discussed above. The declarations lack credibility and probative value for the reasons noted. On appeal, the applicant merely asserts that the director did not properly assess the evidence. This statement on appeal, absent additional probative evidence, fails to overcome the objections noted by the district director.

In this case, the absence of credible and probative documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and 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.