U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEWARK Date: DEC 17 2007

MSC-05-225-10838

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, New Jersey, and 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, on May 13, 2005. The district 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 district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of residence in this country during the period in question.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of his admissibility, as well as whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982, shall continue.

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)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687

application and fee or was caused not to timely file. See CSS Settlement Agreement paragraph 11 at page 6 and Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.* 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit any evidence to support his claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 13, 2005. 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 listed [redacted] Florida, from December of 1981 to February of 1988. At part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant claimed that he was employed by Boatwright Citrus located in Fort Pierce, Florida, from December of 1981 to January of 1988.

In an attempt to establish his continuous unlawful residence in this country prior to January 1, 1982, the applicant provided the following affidavits:

- An employment affidavit from [redacted] in which he stated that he employed "[redacted]" as a fruit picker from December of 1981 to January of 1988, and that he paid him weekly in cash. The applicant listed the name [redacted]' in his Form I-687 application as being that of his father, not himself. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). It is further noted that the applicant lists his date of birth in his Form I-687 application as May 31, 1976. As was noted by the director in her decision, it is highly unlikely that the applicant was employed as a fruit picker at the age of five (5). Furthermore, there has been no corroborating evidence submitted, such as official company records, company payroll rosters, certification of the filing of federal income tax returns or certification of the filing of state employee or income tax returns, to substantiate the applicant's claim. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because this affidavit is significantly lacking in detail and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A residence affidavit from [redacted] in which he stated that [redacted] and his family lived at [redacted] Florida, from December of 1981 to February of 1988. The applicant also submitted a copy of the affiant's voter registration card. Here again, the applicant listed the name [redacted] in his Form I-687 application as being that of his father, not himself. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Furthermore, it is highly unlikely that the applicant, at age five (5), was interested in or capable of renting a house. Although the information contained in the affidavit probably pertains to the applicant's father [redacted] he has failed to convince the AAO of its authenticity as it pertains to a five (5) year old child. Because this affidavit is unbelievable and significantly lacking in detail, and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A business affidavit from [redacted]s Appliance Company in which he stated that he sells appliances such as: stoves, refrigerators, air conditioners, etc. and that [redacted] has been a business customer, off and on, from 1981 to 1988. The applicant also submitted a copy of the affiant's business license and voter registration card. Here again, the applicant listed the name [redacted] in his Form I-687 application as being that of his father, not himself. Further, it is highly unlikely that Mr. [redacted] did business with a five (5) year old child. The affiant has not provided evidence that he himself was present in the United States during the requisite period. There has been no corroborating evidence submitted to substantiate the affiant's claim. Because this affidavit is unbelievable and significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The district director determined that the applicant failed to submit any evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on June 23, 2006.

On appeal, the applicant reaffirms his claim of continuous residence in the United States. The applicant indicates that he does not possess additional documents in support of his claim of residence because he was in an unlawful and undocumented status. While it is acknowledged that the applicant may have experienced difficulties in obtaining supporting documentation relating to a period when he was an undocumented alien, the applicant's unlawful status is insufficient to explain his failure to submit any evidence to support his claim of residence in this country for the requisite period.

The absence of any supporting documentation that provides testimony to corroborate the applicant's claim of continuous residence from prior to January 1, 1982 through the date he purportedly attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988 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. The applicant has failed to submit any credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982, by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide any independent evidence to corroborate his claim of residence it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to his failure to establish that he is admissible to the United States, the applicant has not met this burden. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.