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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 29 2008

MSC-06-084-11945

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.

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 (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 failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite period. The director specifically noted that five affidavits submitted by the applicant's acquaintances indicated that the affiants knew the applicant since 1981, but that at his interview on April 5, 2006, the applicant provided contradictory dates, either in 1982 or 1983, as the dates they met or knew each other. The AAO notes that the affiants stated that they knew "of the presence" of the applicant, or that he resided in the United States since 1981, but did not state when they personally met the applicant.

On appeal, the applicant asserts that he arrived in the United States in 1981 and that he was nervous and confused during his interview and became confused with his dates. He also provided copies of affidavits previously submitted and considered by the director as well as a copy of an affidavit from his mother, dated February 1, 2006 and translated into English on April 3, 2006. In this affidavit, the applicant's mother stated that she gave permission to the applicant to travel to the United States in 1981 with his brother and entrusted him to the care of his brother at that time.

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 December 23, 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 his first address in the United States to be [redacted] **from 1981 to 1989.** Similarly, at part #33, he indicated that he was unemployed from 1981 to 1988.

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

> An affidavit dated November 30, 2005 from [redacted] in which he stated that he has known of the presence of the applicant in the United States since 1981 and that he met the applicant through his brother, [redacted] with whom he worked at that time. He also stated he has had the pleasure of seeing the applicant grow from adolescence into a young man and that they get together at family events and during holidays.

- An affidavit dated November 30, 2005 from in which he stated that he has known of the presence of the applicant in the United States since 1981 and that he met the applicant through his brother, [redacted] with whom he worked at that time. He also stated he enjoyed taking the applicant to the park and playing various sports with him when he was a young boy. He also stated that he keeps in contact with the applicant by phoning him from time to time.

- An affidavit dated November 30, 2005 from [redacted] in which he stated that he has known of the presence of the applicant in the United States since 1981 and that he met the applicant through his brother, [redacted] with whom he worked at that time. He also stated that he has known the applicant for a long time, taking to him as his own brother, and that he was fortunate to observe the applicant grow to be a nice young man.

- An affidavit dated November 29, 2005 from [redacted] in which she stated that she has known that the applicant had lived in the United States since 1981 and that she babysat for him until 1983. She also stated that she and the applicant would visit each other frequently and that he became good friends of her family. The applicant later contradicted this affiant, claiming at his interview that she was his babysitter from 1983 to 1988.

- An affidavit dated November 30, 2005 from [redacted] in which he stated that he has known of the presence of the applicant in the United States since 1981 and that he met the applicant through his brother, [redacted] with whom he worked at that time. He also stated that he would visit with the applicant at his brother's home and would play sports with the applicant from time to time.

- An affidavit dated November 30, 2005 from [redacted] in which he stated that he has known of the presence of the applicant in the United States since 1981 and that he met the applicant through his brother, [redacted] with whom he worked at that time. He also stated that he has observed the applicant grow from a young child and that he sees the applicant at family gatherings and during holidays.

Here, the affiants fail to specify places where the applicant resided during the requisite period to support his claimed continuous residence in the United States since prior to January 1, 1982. Although the affiants claim that the applicant's brother initially introduced them to him, they have failed to indicate where or when. Because the affidavits are significantly lacking in detail, they have little probative value and can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period. Moreover, during his interview, the applicant indicated that he did not meet any of the affiants before 1982 or 1983.

The applicant also submitted the following declaration in an effort to establish his presence in the United States:

- A declaration dated December 1, 2005 from [redacted] in which he stated that the applicant is his brother and that the applicant has been in the United States since 1981. He further stated that his parents sent the applicant to the United States for him to be raised and that he was afraid to enroll the applicant in school due to the possibility of him being deported; so he kept him at home and hired a babysitter. This affidavit has some weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was not credible. The director also noted the discrepancies that existed between the applicant's statements made during his immigration interview on April 4, 2000 and those statements made by the affiants, and that the affiants stated that they knew "of the presence" of the applicant, as noted above.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. He asserts that he has been in the United States since 1981, and that he was nervous during his immigration interview. He also asserts that he responded too quickly to the questions presented by the immigration officer, resulting in him confusing his dates. **The applicant resubmitted the attestations noted above as evidence. The** applicant also submitted the following attestation:

- An affidavit from [redacted] in which she stated that the applicant is her son. She also stated that in 1981 she granted permission for the applicant to travel to Los Angeles, California accompanied by and under the care of his brother [redacted] This affidavit has some 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 since prior to January 1, 1982. The applicant has failed to overcome the grounds in the denial raised by the director. Although he states on appeal that he was nervous during his immigration interview causing him to confuse dates, he has nevertheless not provided sufficient evidence of his residence as required. Furthermore, the affidavits submitted by the applicant specifically lack detail essential to support his claim of presence in the United States since 1981. Statements made by the applicant during his interview conflict with statements of one of the affiants. For these reasons, the affidavits can be accorded only minimal weight in establishing that he resided in the United States throughout the requisite period. The affidavit submitted on appeal from the applicant's mother, while indicating that the applicant traveled to the United States in 1981, is not evidence of his residence in the United States for 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 contradictory statements and his 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.