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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHICAGO Date: AUG 29 2008

MSC-06-098-28107

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, Chicago. 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. Specifically, the director stated that the applicant failed to submit evidence that was sufficient to meet his burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the director did not accord due weight to the evidence he submitted in support of his application.

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).

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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 6, 2006. 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 stated his address in the United States during the requisite period to be: [redacted] Texas from June 1981 until May 1986; and [redacted] in Chicago, Illinois from May 1986 to January 1989. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period. Here, he indicated he was absent during the month of August in 1987 when he went to Mexico to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed as a laborer for [redacted] Circle Maintenance from June 1981 until May 1986; and at Labor World as a laborer in Chicago, Illinois from May 1986 until June 1989.

The record also contains a Form I-687 that the record indicates was submitted by the applicant's attorney and contains corrections to the Form I-687 submitted on January 6, 2006. This Form I-687 was signed on August 22, 2006. The AAO finds that the following changes were made to the applicant's Form I-687: 1) part #30 shows an additional address, indicating that the applicant

resided at in Chicago from May 1986 until August 1986; 2) part #33 indicates that the applicant worked for a poultry plant from November 1981 until 1983. It is noted that this Form I-687 indicates that he also worked for Circle Maintenance on dates that are consistent with his January 2006 Form I-687.

The record contains a third Form I-687 that the applicant signed on August 12, 1991. The applicant's residences in the United States, absences from the United States and employment as reported in this Form I-687 are consistent with the Form I-687 that he filed in January 2006.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On May 5, 2006, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant. In this NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

It is noted that the record contained evidence of the applicant's residence in the United States that the applicant appears to have submitted prior to the issuance of this NOID. The applicant also submitted additional evidence in support of his application in response to the director's NOID. The record contains the following evidence that is relevant to the applicant's residence in the United States during the requisite period:

1. Two affidavits from [redacted] that are both dated March 27, 2006. The affiant submits a photocopy of her Texas State Driver's License with one of her affidavits. In her first affidavit, the affiant states that she met and worked with the applicant at the Luling Poultry Plant from September 1981 until the plant closed in 1983.

In her second affidavit, the affiant also states that she met and worked with the applicant and [redacted] at the poultry plant from September 1981 until it closed in 1988.

2. An affidavit from [redacted] that was notarized in an unspecified month in 2006. The affiant submits a photocopy of his permanent resident card with his affidavit. The affiant states that he worked with the applicant at the poultry plant from 1981 to 1983 in Luling, Texas. He states that the poultry plant shut down in 1983 and that he knows the applicant worked and lived in Luling, Texas until 1988 when he moved to Illinois.

3. A declaration from [redacted] that was translated on September 5, 2006. The declarant submits a photocopy of her permanent resident card with her declaration. The declarant states that the applicant, who is her brother, sent her money when he was in Texas during the years 1981 to 1988. However, the declarant does not indicate how she knows that the applicant was residing in Texas during the requisite period. She does not say whether she ever personally saw him in the United States at that time or whether there were periods of time that she knows the applicant was absent from the United States.

4. A declaration from [redacted] that was translated on September 5, 2006. The declarant submits a photocopy of her permanent resident card with her declaration. The declarant states that the applicant, who is her brother, provided for her economically from 1981 until 1984. However, the declarant does not indicate where the applicant was residing at that time. Therefore, this declaration does not carry any weight as evidence that the applicant resided in the United States during the requisite period.

5. An affidavit from the applicant that was notarized on April 10, 2004. The applicant states that he only resided in Austin, Texas on Harmon Avenue from November 1983 until June of 1986. He states that he moved back to Luling, Texas after losing his job. He states that he then worked on a farm there until March of 1988. It is noted that the applicant indicated on his Forms I-687 that he resided in Chicago beginning in May 1986.

6. An affidavit from [redacted] that was notarized on April 10, 2004. The affiant states that he and the applicant shared an apartment in Luling, Texas from May 1981 until October 1983. He states that the landlord was [redacted] and that he and the applicant worked for Luling Poultry while they lived together in Luling, Texas. It is noted that the applicant did not indicate that he resided in Luling, Texas on any of his Forms I-687 in the record. Further, though the applicant submitted a Form I-687 through his attorney at the time of his interview that indicates that the applicant worked for a poultry plant in Luling, Texas, the dates this Form I-687 associates with that employment are from November 1981 until November 1983.

7. An affidavit from [redacted] that was notarized on June 10, 2003. The affiant states that he knows the applicant was employed by [redacted] at Circle Maintenance in Austin, Texas from June 1981 until May 1986 and that the applicant resided in Austin, Texas at that time. However, the affiant does not state when or where he met the applicant or whether he first met him in the United States. He does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during the requisite period when he did not see the applicant.

8. An affidavit from Salvadore De La Puente that was notarized on April 12, 2003. The affiant submitted a photocopy of his Illinois Driver's License with his affidavit. The affiant states that he has known the applicant since at least May 1981. He states that he knows that the applicant resided in Austin, Texas from May 1981 until June 1986. It is noted that the applicant has consistently stated that he entered the United States in June 1981. The affiant fails to indicate when or where he first met the applicant or whether he first met him in the United States. He does not indicate how he has determined the date that the applicant first began residing in the United States. He does not state the frequency with which he saw the applicant during the requisite period.

9. An affidavit from [redacted] that was notarized on April 12, 2003. The affiant states that she has known the applicant since June 1981 when he resided in Austin, Texas. She states that she moved in 1985 and did not see him again until 1989 in Chicago.

10. An affidavit from that was notarized on February 11, 1992. The affiant States that the applicant was absent from August 10 to August 30 in 1987.

11. **An affidavit from** [redacted] that was notarized on August 30, 1991. The affiant states that the applicant was absent from the United States from August 10 until August 30, 1987.

12. An original Form W-2 from 1984 that indicates it was issued to [redacted] who worked for [redacted]n Austin, Texas. A handwritten social security number of [redacted] appears at part #8 of this statement.

13. An original envelope that indicates it was sent by the applicant in Austin, Texas to [redacted] on September 13, 1985.

14. An original envelope that indicates it was sent by the applicant in Luling, Texas to [redacted] in Mexico on January 4, 1984.

It is noted that the applicant also submitted documents as proof of his residence in the United States subsequent to the requisite period. The matter in this proceeding is whether the applicant

has submitted sufficient evidence to prove that he resided in the United States for the duration of the requisite period. Because these documents do not pertain to the requisite period, they are not relevant to this proceeding and therefore, they are not discussed here.

The director denied the application for temporary residence on September 12, 2006. In denying the application, the director stated that the applicant only submitted affidavits from three people who stated they worked with the applicant in Luling, Texas from September 1981 until 1983 and affidavits from two siblings who stated that the applicant sent them money during the requisite period. The director states that the applicant failed to submit additional evidence in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period. The director goes on to say that the applicant failed to submit sufficient evidence to meet his burden of establishing that he entered the United States before January 1, 1982.

The AAO notes that the director did not specifically refer to many of the documents that were also in the record that were previously submitted by the applicant. However, regardless of whether the director fully considered this evidence or not, the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6) and, as such, this evidence was fully considered on appeal. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, through counsel, the applicant asserts that the director failed to accord proper weight to evidence in the record that he submitted in support of his application. He states that the director did not address the contemporaneous evidence submitted by the applicant that includes the two envelopes mailed by the applicant in 1984 and 1985 and the 1984 W-2 Form.

As was previously noted, counsel is correct in his assertion that the applicant submitted two original envelopes that show the applicant mailed them in 1984 and 1985. He also submitted an original Form W-2 from 1984.

However, the record is not consistent when indicating the addresses of residence the applicant lived at during the requisite period. Specifically, he has submitted Forms I-687 that indicates that he moved to Chicago and began residing there in May of 1986. However, he has submitted two affidavits from [redacted], one of which states that the applicant worked at the Luling poultry plant in Texas until 1988, one affidavit from [redacted] which states that he knows that the applicant resided in Texas until 1988, and one from himself that was notarized on April 10, 2004 on which he states that he worked in Texas until 1988. The applicant has also submitted an affidavit from [redacted] who stated that the applicant

resided with him from 1981 until 1983 in Luling, Texas, while also indicating on his Forms I-687 that he resided in Austin, Texas from 1981 until 1986.

In this case, the absence of credible, consistent and probative documentation to corroborate the applicant's claim of continuous residence during the 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 regarding the applicant's addresses of residence during the requisite period, 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.