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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-013-11741

OFFICE: LOS ANGELES

DATE: DEC 29 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:

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.

John F. Grissom, Acting 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, California. 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 denied the applicant's Form I-687 because he failed to establish his continuous residence in the United States after January 1988.

On appeal, the applicant asserts that he has continuously resided in the United States for the requisite time period. The applicant submits witness statements as corroborating evidence of his residence in the United States during the requisite period.

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of statements of relationship written by friends. The AAO has reviewed and considered each document in its entirety in rendering a decision on the appeal.

The director denied the applicant’s Form I-687 because he failed to establish his continuous residence in the United States after January 1988. As stated, 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). Under the CSS/Newman Settlement Agreements, the term “until the date of filing” 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 record does not show the date the applicant attempted to file or was caused not to timely file a Form I-687 during the original legalization application period. Therefore, the applicant’s absence in January 1988 is not relevant to his eligibility for temporary resident status under the terms of the CSS/Newman Settlement Agreements. Accordingly, the director’s decision was in error and has been withdrawn from the record.

The AAO issued a notice to the applicant on October 31, 2008 informing him that the director's decision was withdrawn from the record. The AAO further informed the applicant that during the adjudication of his appeal, it was determined that he had not established by a preponderance of the evidence his continuous residence in the United States during the requisite period. The AAO indicated that based upon this determination, it intends to dismiss the applicant's appeal. The applicant was granted thirty days, pursuant to 8 C.F.R. § 103.2(b)(8), to submit additional evidence to overcome this finding. As of the date of this decision, the applicant has not responded to the AAO's request for additional evidence. Therefore, the record will be considered complete for purposes of rendering a decision on the appeal.

The applicant furnished the following documentation as evidence of his residence in the United States during the requisite period:

- A fill-in-the-blank form affidavit from [REDACTED], dated April 21, 2006. This affidavit provides that [REDACTED] has personal knowledge of the applicant's residence at [REDACTED] from February 2004 to present. It states that [REDACTED] knew the applicant and his family in the Philippines and he invited her to his home when she arrived in the United States. The applicant also furnished an unsigned fill-in-the-blank form statement from [REDACTED] stating that she was his family friend and neighbor in the Philippines. It states that she has knowledge of the applicant's entry into the United States in the early 80's because his parents maintained constant contact with his aunt and cousins who were caretakers of the home his family left behind. It also states that on several occasions she would speak with the applicant's mother on the telephone. These statements indicate that [REDACTED] does not have direct personal knowledge of the applicant's residence in the United States. Her knowledge of the applicant's residence in the United States is limited to secondhand sources. Given this deficiency, these documents are of little probative value as evidence of the applicant's residence in the United States during the requisite period.

A fill-in-the-blank form affidavit from [REDACTED] dated April 20, 2006. This affidavit provides that [REDACTED] has personal knowledge of the applicant's residence at [REDACTED] Los Angeles, California; [REDACTED] Los Angeles, California; and [REDACTED] Los Angeles, California. It states that the applicant's mother was her co-worker and they spent Friday evenings dancing, partying or playing cards. The applicant also furnished an unsigned fill-in-the-blank form statement from [REDACTED] stating that during the requisite period his mother was working as a caregiver and she was a cleaning lady in Highland Parks. It states that she spent time with the applicant's mother dancing, signing, partying and playing cards. It states that the applicant was mostly at home during this time and "would join in the fun." These documents offer testimony on [REDACTED]'s relationship with the applicant's mother. However, they do not provide any information on the applicant's residence in the United States during the requisite period. Given this deficiency, these documents are of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank form affidavit from [REDACTED], dated April 21, 2006. The affidavit provides that [REDACTED] has personal knowledge of the applicant's residence in Los Angeles, California from March 1981 to December 1988. The affidavit states that the applicant and his parents visited [REDACTED] in Washington and she then drove the applicant and his parents to Los Angeles, California. The applicant also submitted an unsigned fill-in-the-blank form statement from [REDACTED] stating that she first met him in Seattle, Washington in March 1981. The statement provides that in July 1984, [REDACTED] visited the applicant and his parents in Los Angeles. It states that during this visit she went with the applicant's mother to a Filipino Club and a friend's house to dance and party. It provides that during Thanksgiving of 1986, the applicant and his mother spent the holiday at her house. It states that in January 1988, the applicant and his father spent the night at her house before he went to Canada. These documents offer some details on the applicant's residence in the United States during the requisite period. However, the information provided is mostly regarding Ms. [REDACTED] relationship with the applicant's mother. They do not provide any specific details on the applicant's residence in the United States during the requisite period. Given this deficiency, these documents are of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The aforementioned witness statements fail to establish the applicant's 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.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which 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 statements. To be considered probative and credible, witness statements 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 witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

