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[REDACTED]

FILE:

MSC-05-173-11059

Office: LOS ANGELES

Date: JUL 08 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:

[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.

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, 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 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 and that he is admissible as an immigrant. 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.

On appeal, counsel asserts that the director did not consider a letter from St. Catherine's Catholic Community. Counsel furnishes additional documentation as corroborating evidence.

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.

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 on March 22, 2005. The application shows the applicant's date of birth as October 27, 1976. Therefore, he was four years old on the date of his first entry into the United States. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided in Los Angeles, California from July 1981 until July 1986 and Rialto, California from July 1986 until June 1988. At part #31 of the Form I-687 application where applicants are asked to list their affiliations or associations with any organizations during the requisite period, the applicant showed that he was involved in the St. Catherine Catholic Church, Riverside, California from 1986 until 2002.

The applicant was interviewed for temporary resident status on August 8, 2005. During the applicant's interview, the adjudication officer issued a Form I-72, request for evidence. The Form I-72 requested the applicant to submit the following documents for the period of 1981 through 1988: copies of his parent's federal income tax returns; copies of his school records; and evidence of his residence in the United States. The Form I-72 also requested the applicant to submit a completed Form I-864, Affidavit of Support.

The applicant, through counsel, submitted a completed Form I-864, Affidavit of Support, with documentation of his sponsor's employment and tax returns. As evidence of his residence in the United States, the applicant submitted an affidavit, dated September 7, 2005, stating that he resided at [REDACTED] Los Angeles, California from July 1981 until July 1986 and [REDACTED] Rialto, California from July 1986 until June 1988. The applicant also submitted two legalization questionnaires he completed to establish his class membership in *Catholic Social Services v. Meese*.

On April 1, 2006, the director issued a Notice of Decision denying the application. In denying the application, the director determined that the applicant failed to provide evidence that he has continuously resided in the United States for the requisite period and that he is admissible as an immigrant. The director's assertion that the applicant has not provided evidence that he is admissible as an immigrant is an unsupported determination. Therefore, this specific part of the director's decision is withdrawn. Nevertheless, the director's action must be considered to be harmless error as 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).

On appeal, counsel asserts that the director did not consider the relevant evidence. Counsel cites to a letter from St. Catherine's Catholic Community, dated August 28, 1981. Counsel's assertion that the director did not consider the letter from St. Catherine's Catholic Community is unfounded. The record does not show that this letter was initially submitted with the Form I-687 application or in response to the Form I-72 request.

Counsel furnishes copies of the following documents: a letter from Reverend [REDACTED] Pastor, St. Catherine's Catholic Community; the applicant's immunization record; and notarized letters from the applicant's friends, [REDACTED] and [REDACTED].

The letter from Reverend [REDACTED] Pastor, St. Catherine's Catholic Community, is addressed to the applicant's mother, [REDACTED]. The letterhead shows that this church is located in Rialto, California. The letter provides, "[o]n behalf of the priests, staff and parishioners of St. Catherine's we extend a warm welcome to you and your family. . . ." The letter, dated August 28, 1981 is addressed to the applicant's mother at [REDACTED], Rialto, California. The applicant, who was four years old in August 1981, would have presumably resided with his mother at this address. However, the applicant's Form I-687 application and affidavit show that from July 1981 until July 1986 he resided at 1427 East [REDACTED], Los Angeles, California. These documents show that the applicant's residence at [REDACTED] Rialto, California was from July 1986 until June 1988. Moreover, on his application, the applicant neglected to list his association with St. Catherine's Catholic Community, Rialto, California, in 1981. The applicant only listed his membership at the St. Catherine's Catholic Church located in Riverside, California from 1986 until 2002.

Given these inconsistencies, this document is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The notarized letter from [REDACTED], dated April 24, 2006, provides:

. . . I have known [REDACTED] and his Mother [REDACTED] since 1985. I met [REDACTED] and his Mother through my Aunt [REDACTED], who was home schooling him at the time. I use to go to [REDACTED] house and visit. Since me and [REDACTED] live right next door to each other, I visited often. Throughout my visits I got a chance to get to know [REDACTED] and [REDACTED] at lot better. . . . I could see that [REDACTED] was a really good kid who loved his mother a lot. That is why I volunteered to babysit [REDACTED]. I knew that [REDACTED] didn't have much money so I agreed to watch [REDACTED] for free. . . . I stopped babysitting [REDACTED] in 1991 because [REDACTED] mother no longer had jobs in Barstow. . . .

This letter details [REDACTED]'s personal knowledge of the applicant's residence in the United States since 1985. It explains how [REDACTED]'s first became acquainted with the applicant and their subsequent relationship. Therefore, this letter is probative evidence of the applicant's continuous residence in the United States since 1985.

The notarized letter from [REDACTED], dated April 24, 2006, provides:

. . . I met [REDACTED] through my sister and neighbor [REDACTED]. [REDACTED] used to do housework for my sister and she would sometimes have her son [REDACTED] with her. . . . Through one of our talks I discovered that [REDACTED] wasn't getting the education that he needed. I told [REDACTED] that I would home school [REDACTED] in the basic subjects that he needed to know. [REDACTED] would clean my sisters' house twice a week. While she was doing that I would tutor [REDACTED]. . . . In 1991 [REDACTED] told me that she would not be visiting [REDACTED] anymore because there isn't enough work here. . . . I told [REDACTED] to continue his quest for knowledge because he is a very intelligent person.

This letter details [REDACTED]'s personal knowledge of the applicant's residence in the United States. However, it does not provide the year that she first met the applicant. Nor does it state the time period during which she tutored the applicant. Therefore, this letter is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant's Immunization Record shows that he received vaccinations on February 17, 1982, April 18, 1982 and October 18, 1982 at the SBVC Health Services located in San Bernardino, California. This document constitutes evidence of the applicant's residence in the United States in 1982. It should be noted that the immunization record shows that the applicant received the

varicella vaccine on February 17, 1982. However, the varicella vaccine was not licensed for use in the United States until 1995.¹

It should be noted that counsel indicated on the appeal notice that he would submit a brief within 30 calendar days. However, counsel failed to submit a brief to the AAO within this time period. On June 13, 2008, the AAO sent a notice to counsel requesting a copy of his brief and/or any additional evidence. As of the date of this decision, counsel has not responded to this request.

In summary, the applicant has not submitted credible and probative documentation to corroborate his claim of continuous residence in the United States for the entire requisite period. The letter from St. Catherine's Catholic Community, dated August 28, 1981, is inconsistent with the applicant's Form I-687 application and affidavit. The letter [REDACTED] omits the date she first became acquainted with the applicant. The letter from [REDACTED] is a detailed account of her relationship with the applicant. However, it is only probative evidence of the applicant's residence in the United States since 1985. Similarly, the probative value of the applicant's Immunization Record is limited to 1982. Therefore, the applicant has not met his burden of proof in this proceeding.

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 the applicant 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.

¹ <http://www.vaccineinformation.org/varicel/qandavax.asp>