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

PUBLIC COPY

[redacted]

FILE: [redacted] Office: MIAMI Date: SEP 15 2008

MSC-06-080-10645

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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, Memphis. 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 application on February 6, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period.

On appeal the applicant states that the affidavits submitted in support of his application are sufficient to meet his burden of proof. The applicant has not submitted additional evidence on appeal.

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)(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).

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 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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 19, 2005. The applicant submitted the following documents in support of his application:

- An affidavit from [redacted] dated August 10, 2006. The affiant states that he entered the United States in 1984. The affiant also states that the applicant entered the United States in 1981. However, the affiant does not explain the basis of this knowledge, as the affiant himself did not enter the United States until 1984. The affiant further states that he began living with the applicant and the applicant's wife in December of 1985, and that he and the applicant worked together at Pine Island Farm for approximately one month beginning in December of 1985. The affidavit lacks probative details such as the nature and frequency of the affiant's contact with the applicant during the requisite period. Given the lack of detail, and the affiant's lack of personal knowledge regarding the applicant's residence prior to 1984, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from the applicant's father, [redacted] and an affidavit from the applicant's mother, [redacted] both dated July 31, 2006. These affidavits are nearly identical. The affiants state that the applicant traveled to the United States in August of 1981 and settled in Miami, Florida. The affiants further state that the applicant returned to Uruguay in March of 1985 and returned to the United States in April 1985. Finally, the affiants state that the applicant returned to Uruguay at the end of 1987. There is no indication that either of the affiants resided in the United States at any time, and the affiants do not explain the basis of their knowledge regarding the applicant's residence in the United States. For example, the affiants do not describe the frequency or nature of their contact with the applicant during the requisite period. Lacking such details, these affidavits will be given only minimal weight as evidence of the applicant's residence in the United States.

- An affidavit from [redacted] dated March 31, 2006. The affiant states that he met the applicant in August of 1981 when he and the applicant resided in the same apartment complex. The affiant explains that he and the applicant spent "some time together" but "because of our jobs it was not too many times." The affiant states that he moved to a different residence in 1984 and that he was in contact with the applicant only by telephone after that, aside from one occasion in July of 1985 when the applicant visited the affiant at his place of employment. This affidavit lacks probative details such as how the affiant dates his initial acquaintance with the applicant. Those details that are provided indicate that the affiant had only limited contact with the applicant and do not make clear that the affiant has personal knowledge of the applicant's residence in the United States during the requisite period. Given these deficiencies, this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit of [redacted] dated August 4, 2006. The affiant states that she met the applicant in October of 1981 when she was introduced to the applicant by her boyfriend, [redacted]. The affiant further states that she and her boyfriend would visit the applicant at the applicant's place of employment, and that they would see him "once in a while" until 1984. Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as how the affiant dates her initial acquaintance with the applicant, or the nature and frequency of her contact with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [redacted] dated March 26, 2006. The affiant states that she was the owner of [redacted] in Miami, Florida from 1983 to 1999. The affiant further states that she employed the applicant on a part-time basis from March 1983 until the end of 1985. This affidavit is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M-* 20 I&N Dec. at 81. However, the affidavit lacks probative details regarding the nature of the applicant's employment. The affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. 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 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. 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.