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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEWARK Date: JUN 01 2009

MSC 06 053 11635

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.

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 Director, Newark. 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 the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director found that the witness statements submitted by the applicant in support of her application lacked sufficient detail relevant to the requisite period to establish the applicant's eligibility for the immigration benefit sought.

On appeal, counsel submits a brief stating that the evidence submitted by the applicant establishes the applicant's eligibility for the immigration benefit sought. Counsel asks that the director's decision be overturned and the application approved.

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 record contains the following evidence which is material to the applicant's claim:

- The applicant submitted witness statements from 13 individuals in support of his application. The statements are general in nature with all witnesses stating that they know the applicant, and that they have personal knowledge of the applicant's residence in the United States during all, or a portion of, the requisite period. [1]

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during

[1] The witness statements suggest that the applicant and his wife met, married and had children in the 1980s. The record is silent, however, as to where and when these events occurred.

the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value. Many of the witness statements attest to the applicant's residency on [redacted] until 1990. This evidence is inconsistent with the applicant's Form I-687 at part 30 where the applicant indicated he lived on [redacted] until 1987. This inconsistency calls into question the extent of the witnesses' familiarity with the applicant's residence during the requisite period.

- The applicant submitted two employment letters in support of his application.

    1. [redacted] Owner (the name of the company is not provided in the letter or on the company letterhead, but the applicant states on the Form I-687 that he was employed by Incas Construction during the dates attested to), submitted an unsworn and undated statement wherein he states that the applicant was employed by his company from August of 1987 through August of 1989 in general construction.

    2. [redacted] Owner, submitted an unsworn statement dated March 26, 1990 on the letterhead of Sparkle Togs, Inc., wherein he states that the applicant was employed by his company from September of 1985 until May of 1987 as a general helper.

The employment statements submitted by the applicant are not deemed probative because they do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment letters submitted by the applicant do not: provide the applicant's address at the time of employment; show periods of layoff (or state that there were none); declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The statements, therefore, are of little evidentiary value.

- The applicant submitted an unsworn attestation from the [redacted] wherein he states that the applicant has been a member of St. Mary's Church in Rahway N.J. for over 20 years, with the applicant having joined the church in 1983.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

(v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official (whose title is shown);

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during membership period;

(E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

The attestation provided is of little evidentiary value as it does not state the applicant's address during the membership period or establish the origin of the information attested to as required by regulation. Further, the letter is inconsistent with the applicant's Form I-687 which indicates that the applicant was a member of St. Mary's Church from 1992 – 2005.

- The applicant submitted a hand written merchandise receipt in his name for the year 1985. The record does not explain the circumstances surrounding the issuance of the receipt.

- The applicant submitted a travel agency letter dated July 31, 1990 which states that the applicant purchased an airline ticket from the agency in May of 1987 for travel from the United States to Peru on May 13, 1987.

The receipt and travel agency letter referenced above do not establish the applicant's residence in the United States. The documents indicate that the applicant was present in the United States in 1985 and 1987, but considered individually and in combination with the other evidence, do not establish the applicant's continuous residence in the United States throughout 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.