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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:

MSC-04-352-10129

Office: NEW YORK

Date: JUN 02 2009

IN RE:

Applicant:



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.

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, New York. 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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was not credible to support the applicant's claim that he had resided in the United States continuously throughout the requisite period. The director also determined that the applicant was not a class member.

On appeal, the applicant asserts that the evidence submitted is credible and sufficient to meet his burden of proving by a preponderance of the evidence that he has resided in the United States since before January 1, 1982.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* 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 (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.

As indicated earlier, the director concluded that the applicant was not a class member. Under the CSS/Newman Settlement Agreements, if the director denies the application solely because the applicant is determined to be a non-class member, the AAO shall have no jurisdiction over the denial of the application. Further, the denial notice shall explain the reason for the denial of the application for class membership and notify the applicant of his or her right to seek review of such denial by a Special Master. *See CSS Settlement Agreement* paragraph 8 at page 5; *Newman Settlement Agreement* paragraph 8 at page 7.

Here, the director denied the application because the applicant failed to submit credible evidence to establish his eligibility for the benefit sought. The director adjudicated the merits of the application and treated the applicant as a class member. Although not raised as an issue by the applicant, the AAO notes that the denial of the application was not solely based on the applicant's lack of class membership, and the appeal for the denial of the application is, therefore, properly before the AAO and not the Special Master.

The sole issue in this proceeding is whether the applicant has furnished sufficient evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The applicant stated at his interview with a United States Citizenship and Immigration Service (USCIS) officer on September 7, 2006 that he had resided in the United States continuously since August 1981. As evidence, the applicant submitted seven affidavits from friends and

former employers. Among the seven affidavits submitted, the affidavit from Jahan Contracting will not be considered since it does not relate to the requisite period.

the owner of E. Hoque General Constructing Co., states in his affidavit that he has known the applicant since 1982 and further indicates that the applicant worked at his construction company as a helper from August 1983 to December 1986. The affiant fails to provide specific information about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affiant fails to provide the applicant's address at the time of his employment, the exact period of the applicant's employment, the description of the applicant's duties with the company, the employment records from which the information was taken, and the place where such records are located and whether USCIS may have access to the records. The affiant also could not be reached and questioned for verification.¹ The affidavit is of minimal probative value as evidence of the applicant's residence in the United States during the requisite period.

The remaining five affiants generally state that they have known the applicant since 1981, 1982 or 1983. Some claim the applicant is their good friend; others indicate they know where the applicant has been residing since 1981; but none of them describes with sufficient detail how he or she first met the applicant, how often he or she met and talked with the applicant during the requisite period, or whether he or she has direct personal knowledge of where the applicant resided and worked in the United States during the requisite period. Nor do any of the affiants offer their telephone numbers for the director to call and verify the information provided. Simply listing the addresses at which the applicant lived or worked during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish his continuous residence in the United States since before January 1, 1982. To be considered probative and credible, witness affidavits 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. Because these affidavits lack relevant detail and because the affiants have failed to offer contemporaneous evidence to establish their residence in the United States during the requisite period, they have only minimal weight as evidence of the applicant's residence in the United States throughout the requisite period.

The applicant also submitted a photocopy of an envelope with a postmark dated August 5, 1983 as evidence of his residence in the United States during the requisite period. Taken individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

¹ A note on the affidavit states that the affiant's telephone number is no longer working.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record 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 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.