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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

FILE: [REDACTED]  
MSC-06-088-14173

Office: PORTLAND

Date:

JUN 24 2009

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.

A handwritten signature in black ink, appearing to read "Elizabeth M. Grissom".

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, Portland, and is now before the Administrative Appeals Office 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 after determining 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. The director noted that the applicant submitted affidavits and ESL certificates, all of which pertain to a time subsequent to the requisite period. The director also noted that the applicant indicated on his asylum application that he entered the United States in 1990. 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, the applicant asserts that he came to the United States with his father when he was thirteen years old and worked with his father as a farm laborer until he was seventeen, at which time he began working on his own. He also asserts that he was not responsible for the information contained in his asylum application. The applicant submits 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).

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. See 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant provided as evidence attestations from [REDACTED] and [REDACTED] who each stated that they have known the applicant since the 1990’s. Their relationships with the applicant are subsequent to the requisite period and are therefore irrelevant to his claimed presence in the United States since before January 1, 1982, and throughout the requisite period.

The applicant submitted three ESL certificates dated subsequent to the requisite period and are therefore of no probative value.

The applicant also submitted a letter dated October 25, 2005 from [REDACTED] of the St. Cecilia Catholic Church who stated that the applicant appeared to be a practicing member of the

Catholic Church, and that although he was not registered with the parish he appeared to know his way around the facilities and has some ties with active parishioners. She further stated that the applicant stated that he attended the weekly Spanish Sunday service. The declarant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and he did not list any. In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership; it does not state the address where the applicant resided during the requisite period, nor does it establish the origin of the information being attested to and thus its reliability.

The director determined that the applicant failed to establish his eligibility for temporary resident status.

On appeal, the applicant reasserts his claim of eligibility for the immigration benefit sought. He submits the following attestations as evidence:

- A fill-in-the-blank affidavit from [REDACTED] who states that he knew the applicant and his father as neighbors of his family. He lists the applicant's address as [REDACTED] in Calexico, California from May 9, 1980 to June 11, 1984. This statement is inconsistent with the applicant's testimony during his immigration interview where he stated that he entered the United States in December of 1981. It is also noted that the applicant does not list the above noted address on his Form I-687 application as a place of residence.
- An affidavit from [REDACTED] who states that the applicant worked on the Soto Farms from 1985 to 1988. This statement is inconsistent with the applicant's Form I-687 application at part #33, where he didn't indicate that he was employed in the United States until 1993. In addition, the letter does not conform to regulatory standards for attestations by employers. Specifically, the letter is not on company stationary and it does not specify the address(es) where the applicant resided throughout the claimed employment period. 8 C.F.R. § 245a.2(d)(3)(i). The affiant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).
- A letter from the president of Sun Valley Harvest, Inc. who states that the company employed [REDACTED] during harvesting season from 1981 to 1987. The applicant has failed to demonstrate that he and [REDACTED] are the same person, and therefore, this statement has no probative value.

The applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial.

Although the applicant claims that his asylum application was fraudulently constructed and that he actually entered the United States in December of 1981, his Form I-687 application does not list any residence or employment for him prior to 1990. Based upon the Form I-687 and accompanying evidence, the applicant was not present in the United States until 1990, which is subsequent to January 1, 1982 and the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detracts from the credibility of this 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 on documentation that is insufficient and lacking 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 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.