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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC-05-253-21908

Office: LOS ANGELES

Date:

MAR 11 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:



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.

A handwritten signature in black ink, appearing to read "John F. 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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving that he entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. In denying the application, the director noted that none of the affidavits submitted contained sufficient detail concerning the applicant's residence in the United States during the requisite period, nor did the affiants accompany their statements with supporting documents.

On appeal, counsel for the applicant submits a brief in which he claims that United States Citizenship and Immigration Services (USCIS) failed to issue a Notice of Intent to Deny (NOID) in violation of Paragraph 7 of the CSS/Newman Settlement Agreement. He further states that the director's failure to issue the NOID denied the applicant the opportunity to submit rebuttal argument addressing any perceived deficiencies in his application and to submit additional evidence. Finally, counsel also states in his brief that the applicant has submitted sufficient credible evidence to establish continuous unlawful residence in the United States throughout the entire statutory period.

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 stated earlier, counsel for the applicant claims on appeal that the director's failure to issue a NOID prior to rendering a final decision is a violation of Paragraph 7 of CSS/Newman Settlement Agreements. Paragraph 7 of the CSS/Newman Settlement Agreement, in pertinent part, states: "Before denying an applicant for *class membership*, the applicant . . . shall be sent a notice of intended denial explaining the perceived deficiency in the applicant's class membership application and providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency." (emphasis added). Here, class membership is not an issue. The director adjudicated the Form I-687 application, thereby treating the applicant as a class member. Moreover, membership in a class does not mean that the application will be sustained. The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status. In her decision, the director determined that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he resided continuously in the United States since his claimed entry into the United States in November 1981 through the date

he filed or attempted to file the application for temporary resident status during the original legalization period. Therefore, because the applicant was deemed a class member, the director was not required to issue a NOID before rendering her final decision and her failure to issue a NOID is not a violation of Paragraph 7 of CSS/Newman Settlement Agreement.

Hence, the remaining issue here is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence, that he entered the United States before January 1, 1982, and continuously resided in the United States throughout the requisite period.

During his interview on November 29, 2006, the applicant testified that he initially entered the United States through San Ysidro without inspection in November 1981 and had since that date continuously resided and worked in the United States, and in June 1987, he attempted to file an application for temporary resident status. As evidence of continuous residence in the United States during the requisite period, the applicant submitted several pay stubs from [REDACTED] and [REDACTED] for November and December 1986 pay period. Upon review, the AAO determines that these pay stubs are credible and probative as evidence that the applicant worked and resided in the United States in November and December 1986 but not as evidence of continuous residence in the United States during the entire requisite period.

To show that he resided continuously in the United States throughout the entire requisite period, the applicant submitted an employment letter-affidavit and six signed declarations from his friends and relatives. All six declarants generally state that they were aware of the applicant's residence or presence in the United States since 1981. Most of them, however, do not have direct personal knowledge of the applicant's residence or presence in the United States since 1981. Their indication that they know the applicant was in the United States before 1982 because their family told them about it or because he lived with their relatives are not persuasive as evidence that the applicant did reside and live in the United States before January 1, 1982. All of the affiants, moreover, fail to indicate where or under what circumstances they met the applicant, the address or addresses at which he lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of his residence. The lack of detail is significant, considering their claim that they have known the applicant since 1981.

As stated above, to be considered probative and credible, affidavits or declarations must do more than simply state that an affiant or a declarant 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. *Matter of E- M--*, *supra*. Since these declarations are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's continuous residence in the United States since 1981.

Finally, the employment letter-affidavit also lacks probative value as evidence of the applicant's continuous residence in the United States during the requisite period. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide specific requirements as to what letters from past employers should contain. Letters from employers that do not comply with the specific requirements are not accorded as much evidentiary weight as letters that otherwise comply. In this case, the affiant, [REDACTED], fails to include some of the most critical information as prescribed by the regulations such as the applicant's address at the time of employment, the exact period of employment, periods of layoff, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records.

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

According to an FBI report dated July 6, 2005, the applicant was convicted with giving false identification to a peace officer, a misdemeanor offense, on August 3, 1994 in violation of the California Penal Code (PC) § 148.9. The applicant was stopped and expeditiously removed from the United States by border patrol agents on April 22, 1998 as he was trying to enter the United States without proper documentation at an unauthorized entry point. The final dispositions of these convictions are not in the record; hence, the AAO cannot determine whether the applicant is ineligible for temporary resident status due to his criminal history. If convicted of a felony or three or more misdemeanors, the applicant is inadmissible and ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1); 8 U.S.C. § 1255a(a)(4); INA § 245A(a)(4).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.