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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: [Redacted]
MSC-05-215-10764

Office: BOSTON

Date: **MAY 20 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:



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, Boston, 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 testified under oath during his immigration interview that he was 15 years old when he entered the United States in December of 1981, that he did not submit any school records, and that although he sought medical attention he did not provide any documentation to support that contention. 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. The applicant states that he never left the United States after his first arrival, does not appear to have been “front-desked,” and thus does not appear to qualify for class membership. As this issue is not before the AAO, it will not be addressed.

On appeal, counsel asserts that the director erred in denying the applicant’s application and that he has submitted sufficient evidence to establish his continuous residence in the United States throughout the requisite period. 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 submitted copies of receipts, collection notices, an employment letter, DMV documents, identification cards, and pay stubs that are dated subsequent to the requisite period and are deemed irrelevant to support the applicant's claimed eligibility for the immigration benefit sought.

The applicant submitted the following evidence:

- A letter from [REDACTED] in which he stated that the applicant had been employed by the T.C. Sweeney Construction Company from December 1981 to December 1984, and again from March 1987 to December 1990. The employment letter does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's place of residence during the alleged employment period or whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).
- A copy of an IRS Form W-2, Wage and Tax Statement for the 1987 tax year bearing the employer name of Hamilton Hardware and the applicant's name as employee.
- A copy of the applicant's marriage certificate issued by the Commonwealth of Massachusetts and dated June 7, 1986.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for the immigration benefit sought.

On appeal, counsel reasserts the applicant's claimed eligibility for temporary resident status and submits the following evidence:

- Two photographs of the applicant and a copy of the Celtic's Championship Wins for 1980 to 1981. Although counsel asserts that the photographs were taken in the United States in 1982 and 1984, and that this is evident from the Massachusetts license plate that appears in one of the photographs and the applicant's wearing a Celtic's tee-shirt in one of the photos, the dates are not verifiable.
- An envelope addressed from the applicant in the United States and postmarked December 3, 1984. This single piece of evidence is insufficient to demonstrate the applicant's presence in the United States since prior to January 1, 1982.

The AAO accepts the applicant's evidence as probative of his residence in the United States from 1986 to 1988. The evidence is insufficient, however, to establish his continuous residence in the United States since prior to January 1, 1982, and throughout the requisite period. The evidence of continuous residence from before January 1, 1982 until the date of his wedding in June 1996 consists of one envelope mailed from the United States on December 3, 1984, two

photographs, and the letter from T.C. Sweeney Construction. As noted above, the employment letter does not conform to the regulations for employment verification. The remaining evidence establishes the applicant's presence in the United States for a brief period, but not his continuous residence from January 1, 1982. The applicant has failed to overcome the basis for the director's denial. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the declarations submitted. Although the applicant claims to have resided in the United States since he was fifteen years old, he has provided neither school records nor immunization records to substantiate such claim. He has also failed to provide evidence from or about any responsible adult or guardian sufficient to demonstrate the circumstances of how he lived during his childhood and throughout the requisite period. Although counsel asserts that the applicant resided with his uncle from December 1981 to August 1983, this assertion has not been substantiated by evidence. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant's initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established.

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 detract 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 inconsistencies found in the record and the lack of supporting documentation, it is concluded that the applicant 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.