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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

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

OCT 19 2010

Date:

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.

Elizabeth McCormack

Perry Rhew
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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence in support of such claim. Counsel includes copies of previously submitted documentation in support of the applicant's appeal.

Although the applicant appeared to be represented, the record did not contain a validly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative. On October 6, 2010, the AAO faxed a request to the attorney listed on the Form G-28 contained in the record asking that counsel provide a completed Form G-28. While counsel subsequently provided the requested Form G-28, the record shows that the AAO issued a decision prior to the receipt of the Form G-28. This current decision is an amended version recognizing counsel as the applicant's attorney of record in these proceedings.

¹ A review of the record reveals that the director had previously denied the application based upon the determination that the applicant had failed to establish that he was a CSS/Newman class member. The director reached this determination by concluding that the applicant had provided conflicting testimony and evidence relating to his absences from the United States during the requisite period. The applicant appealed the denial of his application to the Special Master who subsequently determined that the applicant met the definition of a class member set forth in the CSS/Newman Settlement Agreements and sustained the applicant's appeal. The AAO concurs with the Special Master's finding that the applicant is CSS/Newman class member. As the issue of the applicant's absences from this country in the period in question constituted the basis of the director's finding that the applicant was not a class member, this issue will not be examined in the context of the applicant's claim of residence since prior to January 1, 1982 because the AAO office does not have jurisdiction to adjudicate class membership denials pursuant to the CSS/Newman Settlement Agreements. Further, it is noted that the director's most recent denial does not relate to the issue of the applicant's absences but instead is based upon the applicant's failure to submit sufficient credible evidence demonstrating his continuous residence in the United States since prior to January 1, 1982.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) 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 "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.* 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 (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 during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on August 6, 2004.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] noted that the applicant visited and stayed with him at an address in Montreal, Canada from October 7, 1987 to October 21, 1987. However, [REDACTED] only attested to the applicant's absence from the United States in 1987 without providing any additional testimony regarding the applicant residence in this country for the required period.

The applicant included two affidavits signed by [REDACTED], and single affidavits signed by [REDACTED], [REDACTED], and [REDACTED]. While all of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant provided an affidavit and a separate letter both of which are signed by [REDACTED]. [REDACTED] stated that he had provided the applicant with dental treatment in December 1981, 1984, 1992, and 2003 and came to know the applicant and his family on a personal basis over the years. Regardless, neither the applicant nor [REDACTED] provided any corresponding dental records, bills, and receipts reflecting such treatment.

The applicant submitted an employment affidavit containing the letterhead of [REDACTED] in Chicago, Illinois that is signed by the owner, [REDACTED]. The affiant declared that he employed the applicant as an office boy at this enterprise from March 1982 to July 1985. However, [REDACTED] failed to provide either the applicant's address at the time of such employment or relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided an employment affidavit containing the letterhead of [REDACTED] (Carry Out) in Chicago, Illinois that is signed by the owner, [REDACTED]. [REDACTED] noted that he employed the applicant as counter manager at this establishment from April 1988 to March 1990. Nonetheless, [REDACTED] failed to include either the applicant's address at the time of such employment or relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on July 29, 2009.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence in support of such claim. Counsel contends that director denied the application because the supporting documents submitted by the applicant consisted of affidavits and declaration. Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record were deemed to be insufficient because the affidavits and declarations lack specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.