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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 333 11729

Office: NEW YORK

Date: **DEC 05 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not submitted sufficient documentation to establish 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 Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. While the AAO concurs with the overall conclusion with regard to the lack of sufficient corroborating evidence, the director was unreasonable in making an adverse finding on the basis of the applicant's failure to submit valid entry documents as evidence of his claimed unlawful entry into the United States in June 1981. Additionally, the director commented on the applicant's failure to submit sufficient documentation establishing the identities of the affiants in Nos. 1 and 2 below. However, the record shows that the letters of both affiants were notarized. Therefore, by virtue of having signed the affidavits before a notary, each affiant's identity was adequately established. As such, the director's erroneous observations are hereby withdrawn. Nevertheless, the director properly concluded that the applicant failed to provide sufficient evidence to establish his unlawful residence during the requisite time period.

On appeal, the applicant disputes the director's findings and submits a brief in support of his claim.

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 Immigration and Nationality Act (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).

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. 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the for the requisite period. The applicant submitted the following documentation to support his claim:

1. A sworn statement dated April 14, 2005 from [REDACTED] claiming that he previously worked at [REDACTED] Contracting Company in Brooklyn, New York and that the applicant also worked there from 1985 to September 1990. [REDACTED] further stated that the applicant worked eight hours daily and that he was compensated \$28.00 per day. Mr. [REDACTED] stated that the applicant lived in company housing during his employment. However, the address of such residence was not provided.
2. A sworn statement dated April 14, 2005 from [REDACTED] claiming that the applicant worked for his construction company from June 1981 to June 1985 and was compensated from \$28.00 to \$32.00 per day. [REDACTED] stated that the applicant lived in company housing during his employment. However, the address of such residence was not provided. The affiant further stated that he took the applicant to a Service office in New York City in November 1987 to apply for temporary resident status, but claimed that the application was not accepted.

Although the applicant submitted one additional employment letter, the employment period discussed was outside the relevant statutory period and, therefore need not be discussed in the present matter.

On March 10, 2006, the director issued a NOID informing the applicant of various deficiencies in the documentation submitted. Several of the director's erroneous findings have been withdrawn. However, the director properly pointed out that the applicant did not provide documentation establishing that the two employers were in the United States at the time of the purported employment.

In response, the applicant submitted his own sworn statement reiterating his claim and attesting to his own good character. The applicant claimed that he attempted to contact the affiant in No. 2 above, but was unsuccessful as the affiant's phone was disconnected. The applicant also provided a photocopy of two passport pages belonging to [REDACTED] followed by two visa pages showing the affiant's various entries into the United States in 1981, 1982, and 1985. Lastly, the applicant submitted a copy of the New York Department of State Division of Corporations showing that [REDACTED] Contracting Co., Ltd., where the applicant claims to have been employed during a portion of the relevant statutory period, was established as of November 6, 1981 and is no longer active. While this document shows that the applicant's claimed employer was active in November 1981, the applicant's purported employment with that entity did not commence until 1985. The applicant did not provide documentation to show when the entity became inactive and whether it was still active during the applicant's alleged employment.

On May 17, 2006, the director denied the application reiterating the deficiencies previously specified in the NOID. The director also commented on the applicant's failure to provide evidence of his 1985 marriage, his wife's lawful U.S. visit in 1986, or the birth of his child in 1987.

On appeal, the applicant resubmits previously submitted documentation and adds his marriage certificate and a copy of a birth certificate as proof of the birth of the applicant's child. With regard to the employment discussed in No. 2 above, the applicant states that the affiant is currently unavailable, as he is outside of the United States. The applicant explains that he does not have any tax documentation as proof of employment because he did not have a social security number at the time. Therefore, the applicant relies on two employment affidavits as evidence of his continuous unlawful residence in the United States during the entire statutory. However, 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether CIS may have access to them. In the present matter, neither letter of employment meets these regulatory requirements. Namely, while both employers stated that the applicant lived in housing provided by the respective employer, neither provided the applicant's actual residential address. Furthermore, neither employer indicated whether the information provided was obtained from company records and, if so, where those records are located. As such, neither employment letter met the regulatory requirements specified above. No further documentation was provided to attest to the applicant's unlawful residence during the time period in question.

In summary, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 upon documents with minimal 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 the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, 20 I&N Dec. 77. 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.