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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:

MSC 05 215 10867

Office: MICHIGAN

Date:

MAY 22 2007

IN RE:

Applicant:

APPLICATION:

Application for Temporary Resident Status under 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director concluded that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B) of the LIFE Act, and therefore, denied the application.

On appeal, counsel asserts that the applicant believes he has established prima facie eligibility for the immigration benefit sought by virtue of having provided sufficient documentary evidence of his residence in the United States since prior to January 1, 1982. Counsel further states that the applicant paid his utility bills through a third party for the purpose of not leaving a paper trail of his unlawful residence.

An applicant for permanent 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 May 4, 1988. 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. 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.12(e).

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.

Although Citizenship and Immigration Services (CIS) regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the present matter, the petitioner did not provide documentary evidence addressing the time period in question in support of the Form I-687, which was received on May 3, 2005. Accordingly, on November 15, 2005, the director issued a notice of intent to deny discussing the various eligibility requirements for the immigration benefit sought. In response, the applicant submitted the following evidence in an effort to establish continuous unlawful residence since prior to January 1, 1982 through May 4, 1988:

- A November 24, 2005 employment verification letter from "My Baby" hand car wash signed by [REDACTED] who stated that the applicant was a seasonal employee between 1982 and 1988.
- A November 28, 2005 letter signed by [REDACTED], administrative director of the Serenity Center Church. The letter states that the applicant was an occasional visitor of the church between the years 1986 and 1989 and became a regular church member in 1996. The letter also confirmed the applicant's address as of 1986, the year he commenced attending the church.
- A November 26, 2005 letter from [REDACTED] on the letterhead of Metro Detroit Allied Home Care Services, Inc. [REDACTED] stated that he previously owned an ice cream business and employed the applicant in that business during the summers of 1985 and 1986. He also confirmed the applicant's address during the time of such employment.
- A November 22, 2005 letter from [REDACTED] indicating that he owned Norm's Ice Cream Company during [REDACTED]'s employment of the applicant in 1985 and 1986. He further stated that [REDACTED] was one of his independent contractors in 1985 and 1986.

Although the applicant has also provided a copy of the relevant visa page showing that his lawful stay in the United States expired on December 5, 1981, the record lacks sufficient evidence to show that the applicant resided in the United States in an unlawful status since prior to January 1, 1982. While [REDACTED] indicates that the applicant was employed at "My Baby" car wash between 1982 and 1988, the exact dates of employment are not provided. Thus [REDACTED] claim does not establish the applicant's unlawful presence in the United States since prior to January 1, 1982. Further, [REDACTED] did not identify his relationship to the claimed employer or explain how he has access to the claimed employer's personnel records. The remainder of the documentation cited above addresses portions of the relevant time period, but does not establish the beneficiary's unlawful residence prior to 1982. Additionally, while the applicant attempts to explain the absence of utility records during his unlawful stay in the United States, he has provided no evidence to corroborate his claim that he paid his utility bills through a third party from whom he leased his residence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel merely reviews the documents submitted by the applicant thus far and draws her own conclusion that the applicant's eligibility is undisputed. Counsel's statement, however, is based on her own opinion and is unsupported by the evidence of record as discussed above.

The applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 1104(c)(2)(B) of the LIFE Act. Given this determination, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

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