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U.S. Citizenship
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Services

✓

[REDACTED]

FILE:

[REDACTED]
MSC 05 172 10627

Office: LAS VEGAS

Date: MAY 22 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not established entry into the United States prior to January 1, 1982, and continuous unlawful residence in the United States from that date to May 4, 1988, the expiration date of the original application period for legalization under section 245a of the Act. The district director further stated that the applicant failed to appear for his second legalization interview or request another opportunity to be interviewed. Therefore, the district 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 denied the application.

On appeal, the applicant states:

On about a month before the due date I went to the appointment to the local I.N.S. office and the security guard did not let me go in because he told me that I have to wait for the written appointment and until the present time I am still waiting for the appointment. I never got it but I got the decision I was not expecting.

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).

An applicant 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, 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.

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. See 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 first issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish entry into the United States prior to January 1, 1982, and continuous residence in the United States from that date through May 4, 1988.

The applicant indicated on the Form I-687, Application for Temporary Resident Status, that he has lived in the United States since August 1981. In support of his application, the applicant submitted five affidavits attesting to his residence in the United States during the period from 1992 to 2005 and an employment verification letter from farm labor contractor [REDACTED] stating that the applicant's father, [REDACTED] worked for [REDACTED] as a farm laborer from January 1976 to April 1978.

The applicant appeared for his first legalization interview at the Las Vegas, Nevada, Citizenship and Immigration Services (CIS) office on November 2, 2005. According to the notes of the interviewing officer, the applicant claimed that he lived in California from 1981 to 1988, but did not provide any evidence to establish his continuous residence in the United States during the requisite period. The interviewing officer issued a notice informing the applicant that he must submit evidence to establish entry into the United States prior to January 1, 1982, and continuous

residence in the United States from that date to May 4, 1988. The applicant was told that he must present this evidence at a second legalization interview at a later date. The applicant was subsequently mailed a second interview appointment notice on January 25, 2006, instructing him to appear at the Las Vegas CIS office on February 13, 2006, for his second interview. The interview notice was mailed to the applicant's address of record, but he failed to appear for the appointment or submit any evidence relating to his residence in the United States during the requisite period.

The district director denied the application on February 13, 2006, because the applicant failed to establish entry into the United States prior to January 1, 1982 and continuous residence in the United States since that date.

On appeal, the applicant did not make a statement or provide any evidence to overcome this basis for denial of the application.

The employment verification letter from farm labor contractor [REDACTED] is not acceptable proof of the applicant's continuous residence in the United States from prior to January 1, 1982 through May 4, 1988 because it relates to the applicant's father and not to the applicant. The five affidavits submitted with the application are not acceptable evidence of the applicant's continuous residence in the United States because none of these affidavits relates to the applicant's residence in the United States during the period from January 1, 1982 to May 4, 1988. All of the affidavits relate to the applicant's residence in the United States between 1992 and 2005.

The applicant has failed to submit any 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 section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The second issue in this proceeding is whether the applicant failed to appear for his second legalization interview as scheduled.

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1). The interview may be waived only for a child under the age of 14, or when it would be impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

In this case, the applicant appeared for his first scheduled legalization interview on November 2, 2005. The interviewing officer issued the applicant a notice informing the applicant that he must provide additional evidence to establish entry into the United States prior to January 1,

1982, and continuous unlawful residence in the United States from that date to May 4, 1988. The applicant was informed that he would be contacted with a second appointment date, at which time he should appear with the requested evidence.

On January 25, 2006, a second notice was mailed to the applicant at his address of record, [REDACTED] [REDACTED] informing the applicant that his second interview appointment was scheduled for February 13, 2006. The applicant failed to appear for his second appointment or request another interview appointment.

On appeal, the applicant states that he went to the Las Vegas office "about a month before the due date" but was told by the security guard to return on the day of his scheduled appointment. There is no evidence that the notice was returned to sender, or that the applicant notified CIS of a change of address. The applicant did not appear at the Las Vegas office for his second interview appointment as scheduled or request another interview appointment. Therefore, the director's finding that the applicant failed to appear for his second interview appointment will be affirmed.

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