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FILE: [Redacted]  
MSC 06 088 14431

Office: NATIONAL BENEFITS CENTER

Date: NOV 21 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. 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 Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Citizenship and Immigration Services or CIS) 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 denied the application.

On appeal, the applicant reiterates his claim of residence in this country for the requisite period and submits an affidavit in support of his appeal.

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 Immigration and Nationality Act (Act) 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. *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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 27, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED], in Liberty City, Texas from 1986 to 1999 and his most current address in Fort Smith, Arkansas from 2000 through the date the Form I-687 application was submitted.

The fact that the applicant failed to list any residence in this country prior to 1986 at part #30 of the Form I-687 application seriously diminished his claim of continuous residence in the United States since prior to January 1, 1982. In addition, the applicant failed to include any documentation in support of his claim of continuous residence in this country for the requisite period.

On June 22, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit any evidence of continuous unlawful residence in the United States from prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] indicated that she first met the applicant in October of 1986 while he was living with his brother at [REDACTED] in Chandler, Arizona. [REDACTED] stated that the applicant had lived in the United States as long as she had known him. However, [REDACTED] failed to attest to the applicant's residence in this country from prior to 1982 through October 1986. Further, [REDACTED] testimony that the applicant was residing in Chandler, Arizona when she met him in October 1986 conflicted with the applicant's testimony that he resided in Liberty City, Texas from 1986 to 1999 at part #30 of the Form I-687 application.

The applicant included an affidavit signed by [REDACTED] who stated that she had known the applicant for the past nineteen years since she first met him in October 1986. [REDACTED] declared that the applicant was living with his brother at [REDACTED] in Chandler, Arizona when she first met him. However, [REDACTED] declaration that the applicant lived in Chandler, Arizona in October of 1986 contradicted the applicant's testimony that he resided at an address in Liberty City, Texas on such date at part #30 of the Form I-687 application. In addition, [REDACTED] failed to provide any testimony that the applicant resided in the United States since prior to January 1, 1982 through October 1986.

The applicant provided an affidavit that is signed by his brother [REDACTED]. [REDACTED] listed his address as [REDACTED], in Liberty, Texas and indicated that the applicant lived with him at this address from 1986 to November 25, 1999. Nevertheless, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 through the date the applicant began living with him in 1986. Additionally, it must be noted that the probative value of [REDACTED] is limited in that he has acknowledged that he is the applicant's brother, an immediate family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party.

The applicant submitted an affidavit signed by [REDACTED] who noted that she had known the applicant since he moved in with his brother in Liberty, Texas on November 25, 1986. [REDACTED] declared that the applicant occasionally worked for her until he moved to Arkansas in 1999. However, [REDACTED] failed to provide any testimony that the applicant resided in the United States from prior to January 1, 1982 up until November 25, 1986.

The district director determined that the applicant failed to establish his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on August 29, 2006.

On appeal, the applicant includes an affidavit that is signed by [REDACTED]. [REDACTED] declares that she had known an individual named [REDACTED] since 1982 when they first met in Chandler, Arizona. Although this individual has the same family name as the applicant, [REDACTED] fails to provide any information relating to the applicant, much less attest his residence in the United States during the requisite period.

The applicant reiterates his claim of residence in this country for the requisite period on appeal. However, the applicant fails to address the fact that he failed to list any residence in this country prior to 1986 at part #30 of the Form I-687 application. In addition, the applicant does not address the fact that two affiants who provided documentation in support of his claim of residence testified that he lived in Chandler, Arizona in 1986 despite his own testimony and the testimony of other affiants that he lived in Texas at that time.

The fact that the applicant himself testified that his residence in the United States began in 1986 at part #30 of the Form I-687 application seriously detracts from the credibility of his claim of residence in this country since prior to January 1, 1982. The existence of contradictory testimony relating to the applicant's place of residence in this country during the requisite period in two of his supporting documents further impairs such 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. The applicant has failed to submit sufficient probative 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)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate his claim of residence, 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 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 record contains a copy of the results of the applicant's Federal Bureau of Investigation fingerprint check dated June 6, 2006. This document establishes that based upon fingerprint comparison the applicant was arrested by the Fort Smith, Arkansas Police Department and charged with theft of property on May 21, 2000. The final disposition of this criminal charge is unknown.

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