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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC-05-082-19466

Office: LOS ANGELES

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. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on December 21, 2004. The director determined the applicant had failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite period.

On appeal, the applicant stated that he has resided continuously in the United States since 1981 and provided additional documentation in support of his application.

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 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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 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 United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on December 21, 2004. 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 the following addresses during the requisite period: [REDACTED] Bell, California from February 1981 to January 1987; and [REDACTED] Los Angeles, California from February 1987 to March 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed only St. Amelia's Catholic Church in Lynwood, California from 1993 to present.

The record includes multiple declarations submitted by the applicant. Several declarations do not confirm the applicant resided in the United States during the requisite period. These include two undated declarations from [REDACTED]; a declaration from [REDACTED] dated August 11, 2005; two undated declarations from [REDACTED]; two undated declarations from [REDACTED]; and a declaration from [REDACTED] dated June 18, 2006.

The record includes an undated declaration from [REDACTED], which does not specifically confirm the applicant resided in the United States throughout the requisite period. [REDACTED] stated that she met the applicant in 1981 and that, months later, the applicant started working for her husband at their market. This declaration does not conform to regulatory standards for letters from employers. Specifically, the declaration does not provide the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. 8 C.F.R. § 245a.(d)(3)(i).

The declaration from [REDACTED] states that the applicant resided at the declarant's residence at [REDACTED] Long Beach, California from April 1981 to October 1983. This information is inconsistent with the information provided in Form I-687, where the applicant indicated he resided at [REDACTED] Bell, California from February 1981 to January 1987. This inconsistency calls into question whether the declarant can confirm the applicant actually resided in the United States during the requisite period.

The record also includes two declarations from [REDACTED] in the Spanish language, which are not accompanied by English translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The record also contains evidence indicating [REDACTED] resided in the United States during the requisite period.

The record contains letters from two associate pastors of St. Emydius Church in Lynwood, California: [REDACTED] and [REDACTED]. These letters both state the applicant has been a member of the parish since 1981. This information is inconsistent with the information provided on Form I-687, where the applicant listed an affiliation with only St. Amelia's Catholic Church from 1993 to present. This inconsistency calls into question [REDACTED] and [REDACTED]'s ability to confirm the applicant resided in the United States during the requisite period. In addition, these letters do not conform to regulatory standards for attestations by churches. Specifically, the letters do not establish the origin of the information being attested to and fail to state the applicant's addresses during the membership period. 8 C.F.R. § 245a.(d)(3)(v).

In denying the application, the director stated that the applicant had failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite period.

On appeal, the applicant stated that he has resided continuously in the United States since 1981 and provided additional documentation in support of his application. This included multiple declarations with supporting documentation.

In summary, the applicant has not provided any contemporaneous evidence of the applicant's residence in the United States relating to the 1981-88 period, and has submitted affidavits and declarations that fail to confirm the applicant resided in the United States during the requisite period, conflict with the applicant's statements, or fail to conform to regulatory standards. Specifically, the declarations from [REDACTED] and [REDACTED] all fail to confirm the applicant resided in the United States during the requisite period. The declaration from [REDACTED] does not specifically confirm the applicant resided in the United States throughout the requisite period and does not conform to regulatory standards for letters from employers. The declaration from [REDACTED] conflicts with the applicant's statements on Form I-687. The declarations from [REDACTED] are not probative because they are written in the Spanish language and are not accompanied by English translations. The declarations from [REDACTED]

and [REDACTED] do not conform to regulatory standards and conflict with the information provided on Form I-687.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and supporting declarations, and 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--*, *supra*. 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.