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U.S. Citizenship
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Services

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LI

[REDACTED]

FILE:

[REDACTED]

MSC-05-215-10153

Office: LOS ANGELES

Date:

OCT 19 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:

[REDACTED]

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

The director determined the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite period. The director also indicated the evidence submitted by the applicant lacks credibility.

On appeal, the applicant indicated the director erred in finding the evidence not credible because this finding is overbroad, the director failed to specify which portions of the evidence are not credible, and the director presented no rational reasons for finding the evidence lacked credibility.

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 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 applicant 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 applicant 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 and 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 Service 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 3, 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 the following addresses during the requisite period: [REDACTED], Los Angeles, California from January 1984 to June 1985; [REDACTED], Glendale, California from July 1985 to June 1987; and [REDACTED] Oxnard, California from June 1987 to June 1989. It is noted that the applicant listed no residence addresses prior to January 1984. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions since entry and until the end of the requisite period: student at Glendale Junior High School, Glendale, California from January 1980 to June 1981; cleaning [worker] at United Maintenance Service, Los Angeles, California from October 1984 to November 1987; and kitchen [worker] at Queency Restaurant, Oxnard, California from December 1987 to July 1989.

The applicant provided multiple documents in support of his application. In a form affidavit dated December 19, 2004, [REDACTED] confirmed that the applicant resided in Oxnard, California from January 1988 to present. [REDACTED] indicated that he is able to determine the beginning of his acquaintance with the applicant from the following facts: "working on the restaurant and school." The affiant also indicated the longest period during the residence described in which he has not seen the applicant is two years. Since the affiant did not specify the two years in which he did not see the applicant, this affidavit does not clearly confirm the applicant resided in the United States during the requisite period. In addition, the affidavit indicated he only had knowledge of the applicant since January 1988.

In his declaration, [REDACTED] stated that the applicant was employed at [REDACTED] restaurant [REDACTED] in Oxnard, California as a cook from 1987 to 1989. This letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not indicate the applicant's address at the time of employment, whether 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.2(d)(3)(i).

In his declaration, [REDACTED] stated that the applicant rented a room in [REDACTED] house at [REDACTED], California from 1987 to 1989. The applicant was working at [REDACTED] Restaurant. Although not required, [REDACTED] did not provide documentation of his identity or residence in the United States during the requisite period. In addition, this letter does not confirm the applicant's residence in the United States prior to 1987.

In her form affidavit dated December 19, 2004, [REDACTED] stated that the applicant resided in Oxnard from 1987 to 2004. She also stated that she met the applicant through a mutual friend and the applicant did odd jobs at her home. The longest period during the residence described in which [REDACTED] has not seen the applicant is one year four months. Since [REDACTED] did not specify the one year four months in which she did not see the applicant and did not specify the month in 1987 in which she became acquainted with the applicant, this affidavit does not clearly confirm the applicant resided in the United States during the requisite period.

In her form affidavit dated December 20, 2004, [REDACTED] stated that the applicant has resided in Glendale, California from June 1986 to 2004. [REDACTED] stated that she met the applicant through other friends from the restaurant. The longest period during the residence described in which she has not seen the applicant is two years. Since the affiant did not specify the two years in which she did not see the applicant, this affidavit does not clearly confirm the applicant resided in the United States during the requisite period.

In his letter, [REDACTED] for United Maintenance Service Co. stated that the applicant worked for him as a part-time employee off and on during October 1984 to November 1987, cleaning and performing general help for commercial buildings. This letter does not conform to regulatory standards for letters from employers. Specifically, the letter does not indicate the applicant's address at the time of employment, whether 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.2(d)(3)(i).

The applicant provided school records confirming he attended Edison Elementary School from January 17, 1980 to June 1980 and Roosevelt Junior High School from September 15, 1980 to June 19, 1981, in the Glendale, California school district. These records confirm the applicant entered the United States prior to January 1, 1982. However, they do not confirm the applicant resided in the United States during the entire requisite period.

In his declaration, the applicant's stepfather [REDACTED] stated that he and his wife brought his wife's children, including the applicant, to the United States in 1979. In 1981, [REDACTED] and his

wife decided to have the applicant drop out of school and stay home to take care of the other children. As time passed, the applicant got a part-time job cleaning offices, to help the family economically. This declaration does not specifically confirm the applicant resided in the United States during the requisite period.

In her declaration, [REDACTED] stated that she met the applicant's mother in the late 1970s when the applicant's mother was working in the building where [REDACTED] and her husband had their business. [REDACTED] stated that the applicant and his mother helped her during a two-month recovery from an auto accident in 1979. [REDACTED] family sold their business in Los Angeles and moved to La Puente in 1981. She lost contact with the applicant's family when she moved again in 1985. This declaration does not specifically confirm the applicant resided in the United States during the requisite period.

In denying the application the director determined the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite period. The director also indicated the evidence submitted by the applicant lacks credibility. The director also explained that there is no record of information regarding the applicant's residence from July 1981 to September 1984.

On appeal, the applicant indicated the director erred in finding the evidence not credible because this finding is overbroad, the director failed to specify which portions of the evidence are not credible, and the director presented no rational reasons for finding the evidence lacked credibility.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted documents that fail to clearly confirm he resided in the United States during the requisite period or do not conform to regulatory standards. Specifically, the affidavits from [REDACTED] and the declarations from [REDACTED] fail to clearly confirm the applicant resided in the United States during the requisite period. The declarations from [REDACTED] do not conform to regulatory standards. The applicant submitted one declaration, from [REDACTED] that clearly confirms his residence in the United States. However, [REDACTED] merely stated that the applicant resided in the United States from 1987 to 1989. The applicant provided documentation that he attended school in the United States from January 17, 1980 to June 1980 and September 15, 1980 to June 19, 1981. However, the applicant presented no documentation specifically confirming he resided in the United States from prior to January 1, 1982 until 1987.

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 fact that the applicant provided no evidence specifically confirming he resided in the United States from prior to January 1, 1982 until 1987, 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



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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.