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FILE: [REDACTED]
MSC-05-197-10026

Office: NEWARK, NEW JERSEY

Date: **APR 17 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Newark, New Jersey. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel submits a brief.

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 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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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 has resided in the United States for the requisite period, 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 15, 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 contends that he resided in California the United States from 1981 to 1986 but stated no address(s). At part #33, he showed his first employment in the United States to be for American Van Equipment, 1985 Rutgers University Blvd., Lakewood, New Jersey as a driver at the salary of \$20,000.00 from February 1986 to 1996.

According to the Form I-687 application, part#3, the applicant was born on December 5, 1965, and in part #16 the applicant asserted he came to the United States in the month of October of 1981, and, but for a short visit to see his mother, never left the United States.

The applicant submitted no relevant documentation of his entry into the United States prior to January 1, 1982. Based upon the evidence presented, the applicant began living and working in New Jersey on or about August 1987.

The applicant has presented sequential pay statements from all his employers from August 7, 1987,¹ down through February 17, 2001. The earliest employer is American Van Equipment above noted. No employment experience is stated by the applicant before February 1986 in part #33 of the Form I-687. Between August 7, 1987 to and through May 6, 1988, the applicant has submitted approximately 23 pay statements from American Van Equipment.

¹ There is also a W-2 statement from American Van Equipment for 1986.

There is no explanation why the applicant had not similarly retained such documents to submit along with his application for the period before August 7, 1987. None of the documents submitted by the applicant as found in the record of proceeding were dated or provided information before 1986. Reasonably the applicant should have been able to produce some indicia or remembrance of his presence in California for five years. According to the applicant's testimony in the record,² the applicant was 16 years of age when he entered the United States which is of school age. If this was the circumstances, the applicant could have submitted school records, medical records or other forms of legal documentation showing he was in the United States during the statutory period.

The director denied the application for temporary residence on June 15, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in the month of October in the year 1981 is not credible. According to the director, at an interview before an officer of the Citizenship and Immigration Services (CIS), the applicant stated that after entering the United States he lived and worked in San Diego, California, for the next five years (between the ages of 16 to 21) but could remember no details of address (s) where he resided, where he worked or the names of persons during that period. There is no explanation in the record for the applicant failure to remember and disclose his whereabouts from 1981 to 1986 other than to say it was in San Diego, California.

The director found, *inter alia*, that the applicant had failed to meet his burden of proof by a preponderance of the evidence to prove 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. The director found that the applicant had failed to prove he, his parent or spouse had visited an office of the Immigration and Naturalization Service (formerly INS, now CIS) to apply for legalization.³

On appeal, counsel asserts that the applicant entered the United States at the age of 16 and resided in California until he was 21 years old before moving to New Jersey. Counsel contended alternatively the applicant attempted to apply for "immigration benefits" at an unnamed office of INS or that it was not the office of INS but a "local organization which was helping illegal immigrants file paperwork." Clearly, this appeal statement falls short of asserting that the applicant had applied for legalization but was turned away by INS or a qualified designated entity. There is no specificity or

² Form I-687, part #16.

³ And the applicant was turned away because INS or the qualified designated entity (QDE) believed that the applicant had either traveled outside the United States after November 6, 1986, without advance parole, or that the applicant had traveled outside the United States and returned after January 1, 1982 with a visitor's visa, student visa, or any other type of visa or travel document. Since the applicant is not alleging that either of these disabling factual situations applies to his residency in the United States (the applicant stated that once in the United States he never left), the applicant could not reasonably have been turned away for those reasons. In fact, counsel fails to state a reason why the applicant "was told he was ineligible for any benefits."

detail submitted in the record amenable to verification to confirm that the applicant applied for temporary residency under the CSS/Newman Settlement Agreements or resided in the United States during the requisite period.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.