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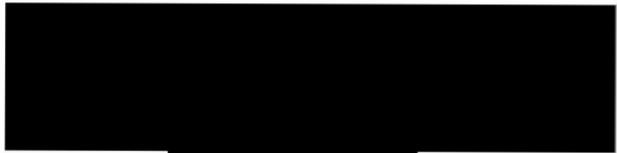
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC 06 032 10906

Office: PHILADELPHIA

Date:

AUG 07 2008

IN RE: Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

Handwritten signature of Robert P. Wiemann in black ink.

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, Philadelphia. 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, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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 or she 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits/Witness Statements

submitted an unsworn statement dated August 25, 2002. The statement was not notarized. states that he has known the applicant and his family for over 20 years, and that he and the applicant rented a house together in Philadelphia, PA from March of 1985 until December of 1990. states that the applicant is honest, a hard worker, and that he began sharing a house with the applicant again when he returned to the United States three years ago (approximately 1999). The statement provides no additional information.

- submitted an unsworn statement dated August 17, 2002. The statement was not notarized. states that she has known the applicant and his wife for eight years, having met them in 1984 while the applicant was living in Philadelphia. The statement provides no additional information.
- submitted an unsworn statement dated January 8, 2003. The statement was not notarized. states that the applicant has been his customer for over three years, that the applicant resides in Philadelphia, and that the applicant is well known and

liked by the employees in [REDACTED] store. The statement provides no additional information, and it does not relate to the requisite period.

[REDACTED] submitted a second statement, also dated January 8, 2003. That statement is also unsworn, and not notarized. In this statement [REDACTED] states that he has known the applicant over two years, that the applicant was born in Colombia, and that the applicant is a person of outstanding character. The statement provides no additional information, and it does not relate to the requisite period.

- [REDACTED] submitted an unsworn statement dated January 9, 2003. The statement was not notarized. [REDACTED] states that she is a resident of Philadelphia, that she has known the applicant for three years, and that the applicant is a person of outstanding character. The statement provides no additional information, and it does not relate to the requisite period.
- [REDACTED] submitted an unsworn statement dated January 10, 2003. The statement is not notarized. He states that she has known the applicant for three years, and that he has established a good friendship with the applicant's family. [REDACTED] regards the applicant as an honorable, reliable and responsible person. The statement provides no additional information, and it does not relate to the requisite period.
- [REDACTED] submitted an unsworn and undated statement. The statement is not notarized. [REDACTED] states that she has known the applicant for over two years, and that she wishes to recommend him for United States citizenship. The statement provides no additional information, and it does not relate to the requisite period.
- [REDACTED] submitted an unsworn statement dated January 7, 2003. The statement is not notarized. [REDACTED] states that she has known the applicant for three years, having met him in 1999 in Philadelphia. The statement provides no additional information, and it does not relate to the requisite period.
- [REDACTED] submitted an unsworn statement dated January 9, 2003. The statement is not notarized. [REDACTED] states that he is a resident of Philadelphia, the owner of [REDACTED] Auto Repair, and that he has known the applicant for three years. [REDACTED] considers the applicant to be an honest and hard working individual. The statement provides no additional information, and it does not relate to the requisite period.

#### Applicant's Statement

The applicant submitted an unsworn and undated statement entitled "DECLARATION OF [REDACTED] [REDACTED]. The statement is not notarized. [REDACTED] states therein he is a citizen of Colombia, that he entered the United States on or about December 13, 1981 through Mexico, and that he resided continuously in the United States from 1981 until December of 1990.

The applicant also provided an unsworn statement on July 20, 2006 in response to the director's Notice of Intent to Deny (NOID). He states therein, in pertinent part, that he entered the United States for the first time on December 13, 1981 through Mexico, and that he was continuously present in the United States from December of 1981 until December of 1990.

Although the applicant has submitted numerous affidavits, unsworn statements, and his sworn statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. In the affidavits submitted, none of the affiants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the applicant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. The affiants state generally that they know the applicant and state that they have known him for a specific period of time. None of the affiants attest that they have known the applicant for the duration of the requisite period, or that he has resided in the United States for that period. When considered collectively, the affidavits do not establish that the applicant is known by the affiants to have been in the United States for the duration of the requisite period. The affidavits contain only general statements of a relationship with the applicant without specific detail establishing the specifics of the relationship such as dates and/or places of contact; the applicant's and affiant's address during those periods; or any other information specific and extensive enough to corroborate the affiant's generalized statements. To be considered probative and credible, a witness statement must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statement must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged.

The applicant states that he has resided in the United States for the requisite period required to obtain the immigration benefit sought. He has not, however, provided supporting documentation to corroborate his assertion of United States residence for the periods of residence noted in his I-687 application. As noted in 8 C.F.R. § 245a.2(d)(6), to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence will be judged according to its probative value and credibility. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits submitted fail to establish continuous residence in an unlawful status in the United States for the requisite period.

#### Other Documentation

- The applicant submitted a copy of an envelope from [REDACTED] addressed to [REDACTED]. The postmark date on the envelope is not legible.
- The applicant submitted a copy of an envelope from J [REDACTED] (with a Philadelphia, PA return address) addressed to [REDACTED] bearing a postmark date of April 17, 1984.
- The applicant submitted a copy of a receipt dated December 4, 1987 from Main Line Paint and Wallpaper. The name on the receipt is [REDACTED].

Even in conjunction with all the other evidence in the record, the referenced documentation does not establish the applicant's continuous residence in the United States for the requisite period. The receipt and the envelope at most indicate the applicant's presence in the United States on or immediately around the two dates indicated.

#### Employment

- The applicant submitted an unsworn statement from [REDACTED], a manager at [REDACTED] Facility Services. [REDACTED] states that the applicant and his wife have been employees of [REDACTED] since May 30, 2000, and that they are responsible employees and good people.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The statement provide by [REDACTED] does not comply with this regulation. Her statement of employment, therefore, is of little evidentiary value. Further, the statement of employment does not pertain to the requisite period for the immigration benefit sought.

Therefore, based upon the foregoing, the applicant 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.