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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

L1

[REDACTED]

FILE:

MSC-05-301-12138

Office: LOS ANGELES

Date:

AUG 29 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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence during the requisite period. Specifically, the director noted that the applicant submitted several documents to prove his residence in the United States since 1983, but had very little evidence to support his claim of unlawful residence from prior to January 1, 1982 up to 1983.

The applicant has not submitted additional evidence on appeal.

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).

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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 15, 2005. At part #30 of the I-687 application, where applicants were asked to list their residences in the United States since their first entry, the first period of residence listed by the applicant began in May of 1981. The first period of employment listed by the applicant, at part #33 of the I-687 application, also began in 1981. The applicant also testified before an immigration officer on January 25, 2006 that he entered the United States, without inspection, from Canada in May of 1981. However, the record also contains an Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC) signed by the applicant on May 22, 1990 in which the applicant stated that he first entered the United States on May 10, 1981 on an F-1 student visa. This claimed difference in the manner in which the applicant entered the United States in May of 1981 is a material inconsistency which detracts from the credibility of the applicant’s claim.

The applicant submitted the following documentation in support of his claim of residence in the United States since prior to January 1, 1982:

- Affidavit of [REDACTED] signed and notarized on August 7, 1989. The affiant states that he has personal knowledge that the applicant resided in Charlotte, NC from May 1981 until June 1987 and in Sylmar, CA from June 1987 until the date that the affidavit was signed. Although the dates and place of residence are consistent with information provided by the applicant on his Form I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded

only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit of [REDACTED] signed and notarized on August 11, 1989. This affidavit is nearly identical to that of [REDACTED]. The affiant claims to have personal knowledge that the applicant lived in Charlotte, NC from May 1981 to June 1987 and in Sylmar, CA from June 1987 until the present. This affidavit lacks details of the affiant's relationship with the applicant such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A copy of a rent receipt dated August 15, 1981, for the rent of [REDACTED]. The receipt bears the applicant's name and corresponds to the address provided by the applicant in his Form I-687 application.

The record also contains an I-94 Departure Record for the applicant which shows that the applicant was admitted on October 1, 1983 as a nonimmigrant student (F-1) with authorization to remain until November 1, 1983. The I-94 form, as well as a number of other documents, all dated after October 1, 1983; tend to show the applicant's residence in the United States. Those documents include copies of bank deposit tickets, insurance premium statements, rent receipts, automobile registration documents, car insurance documents, pay stubs and W-2 Wage and Tax Statements.

As noted above, the burden is on the applicant to prove that he resided continuously in the United States in an unlawful status throughout the requisite period. INA § 245A(a)(2)(A); 8 C.F.R. § 245a.2(b)(1). Here, the applicant has submitted only two affidavits and one rent receipt to prove his residence from 1981 until 1983. As noted above, the affidavits are of minimal probative value. The applicant has also submitted evidence that he was admitted in *lawful* status as an F-1 nonimmigrant on October 1, 1983. Thus, the applicant has failed to establish that he resided in the United States continuously in an unlawful status throughout the requisite period.

Further, the record shows that the applicant testified before an immigration officer on March 10, 2003 that he was absent from the United States from August 10, 1983 until October 1, 1983, a period of 51 days. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The applicant's admitted absence from the United States from August 10, 1983 until October 1, 1983, a period of more than 45 days, is a break in any period of continuous residence the applicant may have established. As he has not provided any evidence that his return to the United States could not be accomplished due to "emergent reasons," 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 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 he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.