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U.S. Citizenship  
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Services

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FILE:

MSC-05-249-13471

Office: LOS ANGELES

Date: DEC 15 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:

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.

  
John F. Grissom, Acting 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 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period.

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).

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) 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 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). To meet his or her burden of proof, an applicant must provide evidence of

eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters; rental receipts; lease agreements; letters from employers and physicians, as well as undated photographs. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

Specifically, the applicant submitted the following documentation:

- Affidavits from [REDACTED] Each of these affiants indicates that they met the applicant at some point between 1983 and 1986. They all indicate that they met the applicant at Our Lady Queen of Angels Church in Los Angeles. However, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Most indicate that they learned that the applicant entered the United States illegally via the Tijuana border crossing because the applicant told them of this fact. This does not represent direct personal knowledge, and therefore, the affidavits are not probative of the applicant's initial entrance. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A letter from Our Lady Queen of Angels Church, signed by [REDACTED] Pastor and dated July 19, 1993. [REDACTED] indicates that the applicant has been a member of the parish since 1983 and that he participated in the church's youth group until 1985. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership period." Though Fr. [REDACTED] provides the dates of the applicant's membership, he does not indicate where the applicant resided during the relevant period or any other information that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period. Thus, it can be given little probative weight.
- An employment verification letter signed by [REDACTED] and dated April 12, 2005. [REDACTED] indicates that he met the applicant in April 1980 and that he was introduced to the applicant by [REDACTED], and that the applicant "did some work for me at my house." He further indicates that "during the time he worked for me, he mentioned that he lived somewhere in Los Angeles area, here in California." Again, this does not constitute direct personal knowledge of the applicant's continuous residency in the United States.
- Similarly, the applicant submitted an affidavit from [REDACTED] who indicates that he met the applicant in February 1980 when the applicant was working on his mother's home. He further states that he is a general contractor and that "from time to time, I hire [REDACTED] to work on various projects." He states that the applicant worked on people's homes in his neighborhood "during the 80's." The affiant does not indicate that he has direct personal knowledge that the applicant resided continuously in the United States during the relevant period. He does not indicate where the applicant resided during the relevant

period, how he dates his acquaintance with the applicant, or how frequently, beyond “from time to time” he saw the applicant.

- **An employment verification letter signed by [REDACTED]** The affiant indicates that the applicant worked for him from December 1987. He provides no additional details. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant’s residence in the United States for the duration of the requisite period.
- **Like the letter from [REDACTED],** the record contains a letter from [REDACTED] of [REDACTED] Construction Co. dated November 27, 1988. The affiant indicates that the applicant worked for him as a carpenter from December 1986 until November 1987. Like the affidavit described above, this affidavit lacks many of the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(i), and will be given no evidentiary weight.
- A letter from [REDACTED] on behalf of R.T. Management. The declarant indicates that the applicant was a tenant in his building from June 1981 until July 1986. His statement is not accompanied by a lease agreement, rental receipts or any other evidence that would verify his statements.
- A California Department of Motor Vehicles receipt indicating that the applicant applied for a driver’s license on December 16, 1987. **This provides some evidence of the applicant’s residence in the United States in 1987.**
- The record contains numerous receipts containing the applicant’s name and signed by [REDACTED]. They do not contain an address or any other information which would explain their significance.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims that he entered the United States in early 1980. However, the record also contains a Form I-485 application, dated June 6, 2003 in which the applicant stated that he lived in Mexico until November 1981. This inconsistency was noted by the director in the Notice of Denial, yet has not been addressed by the applicant on appeal.

On appeal, the applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.