

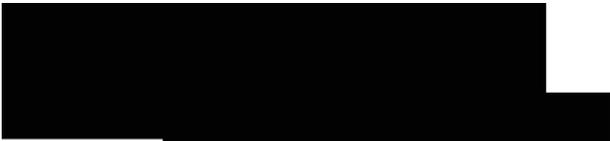
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FILE: [REDACTED] Office: National Benefits Center Date: **FEB 11 2008**
MSC-06-069-14247

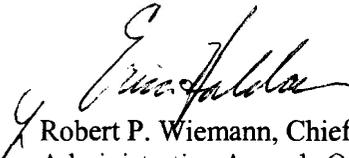
IN RE: Applicant: [REDACTED]

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. 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 Director, National Benefits Center. 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 submitted sufficient evidence of his residence in the United States during the requisite 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)(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.* 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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 8, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 reported his first address in the United States to be in Los Angeles, California, from May 1981 until September 1998. The applicant claims that he was not employed between May 1981 and July 1990 because he was a dependent of his parents. The applicant’s residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant failed to file with his application any corroborating evidence of his residence in the United States during the requisite period. The documentation provided by the applicant included a California Identification Card, issued September 15, 1998; an Identification Card entitled “Mexicano Certificado De Matricula Consular”; and an English translation of his Birth Certificate. However, these documents do not relate to the applicant’s residence in the United States during the requisite period. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

On January 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted numerous notarized letters. Two of these letters do not relate to the requisite time period. The applicant submitted a letter from [REDACTED] that states she has known the applicant since 1997 and a letter from [REDACTED] that states he has known the applicant since 1998. Therefore, these two letters are irrelevant to this proceeding.

The applicant submitted a set of notarized letters from [REDACTED] and [REDACTED]. The authors of these letters indicate that they have known the applicant during the requisite period. However, these documents lack significant detail. The letters are not readily amenable to verification as they lack phone numbers. The letters fail to provide detailed information on how the author met the applicant and the extent of their contact during the requisite period. Therefore, these letters can only be afforded minimal weight as corroborating evidence due to their lack of detail.

The applicant submitted another set of notarized letters from [REDACTED] and [REDACTED]. These letters indicate that the authors have known [REDACTED] and [REDACTED]. The applicant’s name as indicated on his Form I-687 application is [REDACTED]. The applicant has not reported an alias for himself on his Form I-687 application. Consequently, the applicant has failed to explain the relevance of these letters, which are written on behalf of [REDACTED] and [REDACTED]. Moreover, these letters are of minimal probative value because they lack considerable detail. The letters from [REDACTED] and [REDACTED] report that the authors have known [REDACTED] and [REDACTED] “over the course of many years” or “for many years” with no other information. Similarly, the letters from [REDACTED] and [REDACTED] report that the authors

have known [REDACTED] and other information.

“since 1980” with no

In denying the application the director determined that the applicant has failed to show by a preponderance of the evidence his residence in the United States during the requisite period. The director noted, “[t]he affidavits that you submitted shows [sic] no proof that the affiants have direct personal knowledge of the events and circumstances of your residency.” The director concluded that the applicant has failed to meet his burden of proof in the proceeding.

On appeal, the applicant states that he can clarify the letters as further proof of his unlawful continuous residence in the United States since prior to January 1, 1982. However, the applicant neglected to provide such documentation with his notice of appeal.

The regulations allow the applicant to submit a broad range of documents to satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). The applicant’s failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The documents previously submitted by the applicant can only be given minimal weight because they lack significant detail. The director’s denial notice alerted the applicant to the deficiency in his evidence; however the applicant neglected to remedy this deficiency on appeal. Thus, the applicant has not demonstrated with relevant, credible and probative evidence that his claim is probably true pursuant to *Matter of E-M-*, *supra*.

In conclusion, the absence of sufficiently detailed 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 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.