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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-06-095-12226

Office: NATIONAL BENEFITS CENTER

Date:

FEB 11 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. 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.

A handwritten signature in black ink, appearing to read "D. King" or similar, with a long horizontal stroke extending to the right.

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 furnishes additional documentary evidence in support 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.* 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 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 January 3, 2006. The applicant signed this application under penalty of perjury, certifying that the information he provided is true and correct. However, the applicant failed to provide on this application any information regarding his residence in the United States during the requisite period. The applicant only reported his current address in Dearborn, Michigan as his “present” address. The applicant also failed to provide any information regarding his affiliations or associations with any clubs, organizations, churches or businesses in the United States. The applicant’s failure to provide this information draws into question the overall credibility of his claimed residence in the United States during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted with his Form I-687 copies of his birth certificate, marriage certificate, the biographical page of his passport, and a card entitled, *Registro Federal De Electores*. While the documents submitted by the applicant establish his identity, they do not relate to the applicant’s continuous residence in the United States during the requisite period.

On February 17, 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 contemporaneous 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 a "fill in the blank" affidavit from [REDACTED]. This affidavit provides, in part, "I have known [REDACTED] since 1973. During the stated period I associated with [REDACTED] closely. . . I have been closely associated with [REDACTED]. He/She has been my friend and we talk often and meet regularly." The affidavit is deficient because the affiant fails to provide detailed information on how he became acquainted with the applicant and the extent of their contact in the United States during the requisite period.

The director denied the application for temporary residence on June 21, 2006. In denying the application, the director noted that the statement from [REDACTED] fails to indicate whether [REDACTED] has direct personal knowledge of the events and circumstances related to the applicant's residency. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he will submit a brief within 30 calendar days. The applicant's Form I-694, Notice of Appeal, is date stamped as filed on July 27, 2006. As of the date of this decision, the applicant has not submitted a brief. The applicant instead furnished documentation to establish the identity and residence of [REDACTED]. The applicant submitted copies of a [REDACTED]'s Michigan operator's license, automobile insurance application, insurance card, application for vehicle certificate of title, notice for termination of employment, automobile insurance invoice, bank statement, capital stock certificate and driver's license application. With the exception of [REDACTED]'s operator's license, each of these documents is within the timeframe of 1979. The applicant also submitted copies of four earnings statements, which do not contain an employee's name, and a bank statement book without the name of the account holder.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). 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 application of the “preponderance of the evidence” standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80.

Pursuant to *Matter of E-M-*, evidence submitted under Section 245A of the Act includes the completed Form I-687, Application for Status as a Temporary Resident, and any documentary evidence to support and corroborate the information contained in the Form I-687. The applicant submitted an incomplete Form I-687 application. The applicant failed to provide on this application any information regarding his residence in the United States during the requisite period. The applicant also neglected to provide on this application any information regarding his affiliations or associations with any clubs, organizations, churches or businesses in the United States. The applicant indicated on the Form I-687 application that his date of birth is February 22, 1973, however there is no evidence that he attended school during the requisite period. Consequently, the applicant’s Form I-687 application is not probative evidence of his residence in the United States during the requisite period.

The applicant submitted one notarized statement from [REDACTED] as corroborating evidence of his eligibility for temporary resident status. In determining the weight of a declaration, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the author is consistent with the other evidence in the record. *Matter of E-M-*, 20 I&N Dec. at 81. It should be noted that with an incomplete Form I-687, there is no other evidence in the record with which to assess the consistency, plausibility and credibility of Mr. [REDACTED]’s statement. In denying the application, the director determined [REDACTED]’s statement does not indicate that he has direct personal knowledge of the events and circumstances related to the applicant’s residency. The applicant responded to the denial notice with documentary evidence of the identity of [REDACTED]. These documents corroborate that [REDACTED] resided in the United States prior to January 1, 1982. However, the applicant has failed to satisfy the director’s assertion that there is no evidence in the affidavit of [REDACTED]’s **direct personal** knowledge of the applicant’s residency in the United States during the requisite period. The statement from [REDACTED] **lacks significant detail on how** [REDACTED] became acquainted with the applicant and the extent of their contact in the United States during the requisite period. Therefore, the documentation submitted on appeal does not overcome the basis for the director’s denial.

In summary, the applicant has failed to provide any credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R.

§ 245a.2(d)(3). His application for temporary resident status consists of an incomplete Form I-687 application and a notarized statement that lacks considerable detail as noted. 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 applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

In conclusion, the absence of credible and probative 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 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.