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U.S. Citizenship
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Services

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FILE: [Redacted] Office: NATIONAL BENEFITS CENTER
MSC-05-256-34046

Date FEB 21 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. 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 furnishes documentation as 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.* 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.

An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). “Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p). “Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An FBI report based upon the applicant’s fingerprints reveals that on September 1, 2001, he was arrested in Oakland, California and charged with one count of *Driving Under the Influence of Alcohol or Drugs*. Section 23536 of the California Vehicle Code provides that the punishment for a first violation of driving under the influence of alcohol or drugs is imprisonment for not less than 96 hours nor more than six months, and by a fine of not less than three hundred ninety dollars (\$390), nor more than one thousand dollars (\$1,000). Pursuant to 8 C.F.R. § 245a.1(o), a conviction for driving under the influence of alcohol or drugs is a misdemeanor. Since the applicant has not provided any court documents related to this arrest, the final disposition is

unknown. One misdemeanor conviction would not make the applicant statutorily ineligible for temporary resident status. However, the applicant's failure to disclose this arrest on his Form I-687 application reflects on the veracity of his credibility. Part #37 of the application requests the applicant to answer "Yes" or "No" to the question of "[h]ave you ever been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance." The applicant answered "No" to this question.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on June 13, 2005. The applicant signed his application under penalty of perjury, certifying that the information contained in the application is true and correct. At part #30 of the application where applicants are 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 Oakland, California from 1998 until 2001. The applicant indicated on part #32 of the application that he resided in Mexico from his date of birth, April 1959, until 1998. At part #33, the applicant showed his first employment in the United States to be in the occupation of labor for [REDACTED] in Bradenton, Florida from 1998 until 2000.

The applicant's Form I-687 indicates that he first resided in the United States in 1998. The primary eligibility requirement for temporary resident status is that an applicant must establish that he entered the United States before January 1, 1982. *See* Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant has failed to provide any information on his application to establish his continuous unlawful residence in the United States since prior to January 1, 1982. Notably, the applicant's residence in the United States since 1998 is even questionable since his application shows he resided in Oakland, California from 1998 until 2001 while he was employed in Bradenton, Florida from 1998 until 2000.

The applicant submitted with his application his birth certificate with certified English translation; California driver's license; tax returns for the years 2001, 2002 and 2004; and Form W-2 for the years 2000 and 2003. While these documents establish the applicant's identity, they do not relate to the applicant's residence in the United States during the requisite period. Therefore, these documents are not relevant to this proceeding.

On November 17, 2005, 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 his own signed written statement in which he requests his application to be reopened and asserts that he can prove that he is prima facie eligible for the benefit.

The director denied the application for temporary residence on July 25, 2006. In denying the application, the director noted that the applicant failed to provide any documentation or affidavits from any person or persons that would have knowledge of his unlawful entry into the United States prior to January 1, 1982 and continued residence during the requisite period. 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 in the proceeding.

The director erred in asserting that to meet his burden of proof, the applicant would have to provide documentation or affidavits from any person or persons that would have knowledge of his unlawful entry into the United States prior to January 1, 1982. The regulations at 8 C.F.R. § 245a.2(b) describe three categories of applicants who are eligible for temporary resident status: (1) applicants who entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in unlawful status; (2) applicants who entered the United States as a nonimmigrant prior to January 1, 1982, and whose period of authorized admission expired prior to January 1, 1982, and who have thereafter resided continuously in the United States in unlawful status; and (3) applicants who entered the United States as a nonimmigrant prior to January 1, 1982, and whose unlawful status was known to the government as of January 1, 1982, and who have thereafter resided continuously in the United States in unlawful status. Therefore, the director’s assertion that the applicant failed to provide documentation from persons who would have knowledge of his unlawful entry into the United States shall be withdrawn. However, the director was correct in his overall conclusion that the applicant had failed to submit credible documents, which would constitute by a preponderance of the evidence his residence in the United States during the requisite period. As noted, the applicant failed to provide any documentation to corroborate his continuous residence in the United States during the requisite period.

On appeal, the applicant furnished documentation to corroborate his residence in the United States. The applicant submitted a letter from the Laborers Local Union #304, which states that he has been a member of the union since June 30, 2002. This letter is irrelevant to this proceeding because it does not relate to the applicant’s residence in the United States during the

requisite period. This proceeding will focus only on documentation that relates to the applicant's claim of continuous residence in the United States during the requisite period.

The applicant submitted a notarized letter from [REDACTED], which provides that he was employed with the applicant from 1979 through 1986. [REDACTED] claims that they would "follow the harvest crop in Ukiah and Lodi[,] California and in the state of Washington." The applicant also submitted a notarized letter from [REDACTED], which states that he and the applicant worked for the same employer between 1978 and 1980. The applicant submitted a third notarized letter from [REDACTED] which states that he and the applicant worked for the same employer between 1978 and 1989 in Ukiah and Lodi, California. These letters provide some information on how the authors first met the applicant and their relationship with the applicant during the requisite period. However, the letters fail to specify the name of the applicant's employer and they do not state his occupation. Therefore, these letters can only be afforded minimal weight as probative corroborating evidence.

The applicant submitted a letter from [REDACTED], HR & Payroll Assistant, [REDACTED]. This letter is on [REDACTED] letterhead and provides, [REDACTED] was a seasonal employee of [REDACTED] during the late 1970's." The regulations at 8 C.F.R. § 245a.2(d)(3)(i) state that:

Letters from employers should be on employer letterhead stationery if the employer has such stationary, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter 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.

This letter from [REDACTED] does not meet the criteria delineated in the regulations. The letter fails to explain the applicant's exact period of employment and employment duties. Ms. [REDACTED] assertion that the applicant was a "seasonal employee" implies that the applicant was employed with [REDACTED] for only a short duration of time. This letter also does not provide the applicant's address during his period of employment. Furthermore, the letter fails to explain whether the information provided was taken from official company records or the reason such records are unavailable. The numerous discrepancies in this letter render it to be of minimal weight as probative corroborating evidence.

Finally, the applicant submitted an affidavit from [REDACTED] which provides that the applicant is his nephew. [REDACTED] claims that the applicant entered the United States in 1975 and resided with him from that date until 1984. This affidavit does provide some corroborating

information of the applicant's residence in the United States during the requisite period. However, the affidavit fails to specify the address where [REDACTED] and applicant resided during their purported residence together. While not required, [REDACTED]'s statement would be stronger if he submitted corroborating documentation of his residence in the United States between 1975 and 1984. Based on the lack of detailed information in this affidavit, it can only be afforded minimal weight as probative corroborating evidence.

Pursuant to *Matter of E-M-*, *supra*, 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 a Form I-687 application, which indicates that he has resided in the United States since 1998. The applicant failed to provide on this application any information regarding his residence in the United States during the requisite period. Consequently, the applicant's Form I-687 application is of no value as probative evidence of his residence in the United States during the requisite period. Furthermore, the documentary evidence provided by the applicant is of minimal probative value as corroborating evidence of his residence in the United States during the requisite period. As noted, these documents contain several deficiencies that when viewed either individually or within the totality of the circumstances, do not contain sufficient proof that the applicant's residence in the United States is "probably true." *See Matter of E-M-*, 20 I&N Dec. 77, 79-80.

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 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.