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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-251-16171

Office: NEWARK

Date: FEB 22 2008

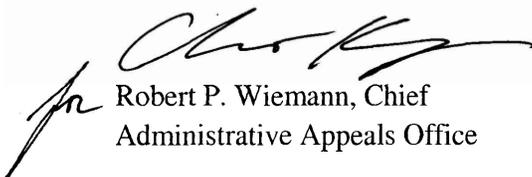
IN RE: Applicant: [REDACTED]

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. All documents have 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 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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant.¹ Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 district 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. He further noted that the applicant had failed to establish that he maintained continuous physical presence in the United States for the requisite period. He also determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

The director noted that by his own admission, the applicant entered the United States three to four months out of a year to complete seasonal farm work from 1972 to 1977, and from 1985 to 1989. The director further noted that the applicant stated that he had not come to live in the United States until 1990.

On appeal, the applicant asserts that the district director's decision is factually incorrect. The applicant further asserts that his application was never acted on and that he was never informed of the director's denial, but for his numerous inquiries. The applicant also asserts that he presented credible evidence to show his continuous presence in the United States as a farm worker since before 1982. He did not submit any additional documentation.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class

¹ See EOIR list of disciplined practitioners at <http://www.usdoj.gov/eoir/vll/libindex.html>.

membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. See CSS Settlement Agreement paragraph 11 at page 6 and 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).

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 credibility of an

affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number.

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 issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

Here, the submitted evidence consists of copies of the applicant's 1990 marriage certificate, Jamaican Identity Cards, Jamaican Immigration Card, Deed of Trust, Legalization Receipt, and U.S. Personal Income Tax Returns for the years 1990, 1991, 1993, 2001, and 2002. This evidence is not probative, credible or relevant to the requisite period. It is noted that the applicant stated during his interview with immigration officials on June 8, 2006 that he entered the United States for three to four months each year until 1990. It is also noted that the applicant indicated on his Form I-485 Application to Register Permanent Residence or Adjustment of Status that his status in the United States was that of a "temporary worker." It is further noted that the applicant indicated on his Form I-687 Application for Status as a Temporary Resident at part #33 that he was a "farm worker" in Florida from 1980 to 1990. Although the applicant asserts on appeal that he has submitted sufficient evidence to show his continuous presence in the United States as a farm worker since before 1982, the AAO finds that by the information contained in the record of proceeding and by his own admission, the applicant's presence in the United States was seasonal and sporadic, not continuous.

In summary, the applicant has not provided any contemporaneous evidence of continuous residence or continuous physical presence in the United States during the requisite periods.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 absence of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.