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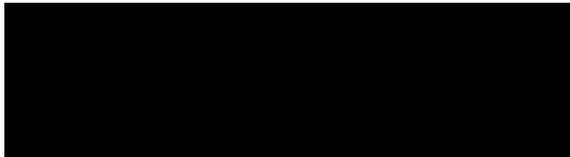
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-166-11022

Office: LOS ANGELES

Date: JUL 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. 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.

for Michael T. Kelly
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, 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, on March 15, 2005 (together, the I-687 Application). 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, noting that employment letters in the record of proceeding are inconsistent with the applicant's Form I-687. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written brief. The applicant states that he first entered the United States in August 1981. The applicant argues that his testimony is credible and that "he has found other evidence and can now verify his residence." As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 has furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 15, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry,

the applicant listed his first address in the United States as _____ Mendota, California, from April 1985 to June 1986.¹ At part #33, he listed his first employment in the United States. At part #32, the applicant listed “n/a” with regards to his absences from the United States as “agricultural” for _____ Labor Contractor in Firebaugh, California from May 1985 to May 1985.² Part #30 states that the applicant visited Mexico for the birth of a child from May 1988 to May 1988. The AAO notes that, during his interview, the applicant mentioned an additional visit to Mexico in April 1985 for two to three weeks.

The applicant has submitted three employment letters; copies of Internal Revenue Service (IRS) income tax forms from 1996 to 2004; copies of the applicant’s pay stubs from 2002 to 2004 and from 1996 to 2000; copies of receipts dated 1997 to 2000; a copy of the applicant’s birth certificate; and a copy of the applicant’s California identification card issued on July 14, 2005. The applicant’s California identification card and birth certificate are evidence of the applicant’s identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record of proceeding also contains a copy of the Form I-705, Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under Section 210 of the Immigration & Nationality Act signed by _____ and the applicant. Some of the evidence submitted indicates that the applicant resided in the United States after the relevant time period. The following evidence relates to the requisite period:

- A notarized letter signed by _____, president of Iresa Bros. Inc. and dated April 5, 2006. The letter includes a photocopy of Mr. _____’s business card which lists his title as “general supervisor.” Mr. _____ states that the applicant was employed by Iresa Bros. Inc. “from September 1981 through April 1985 for a total of one hundred estimated days for each year.” Mr. _____z also states that he is “unable to provide actual payroll records since such documents were completely destroyed in a fire.” Finally, Mr. _____ states that he was able to recognize the applicant because he and the applicant have “yearly personal contacts.” Mr. _____z attested that the information that he provided was true and correct to the best of his knowledge “under penalty of perjury.” Although the statement is notarized, it is not on company letterhead. The letter also 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

¹ The AAO notes that the record of proceeding contains an employment letter stating that the applicant worked in the United States beginning in September 1981. However, the record of proceeding does not contain an address for the applicant prior to the one listed in the Form I-687.

² The AAO notes that in the Form I-705, Affidavit Confirming Seasonal Agricultural Employment of an Applicant for Temporary Residence Status Under Section 210 of the Immigration & Nationality Act and in a letter signed by _____ the dates of employment are listed as from May 1, 1985 to May 1, 1986.

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. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A notarized letter signed by [REDACTED] a farm labor contractor and dated November 30, 2004. The letter includes a photocopy of Mr. [REDACTED] business card. Mr. [REDACTED] states that the applicant was employed by his "farm labor contracting firm from May 1, 1985 to May 1, 1986 for a total of one hundred [and] five days." Mr. [REDACTED] also states that he is "unable to provide actual payroll records [because such] records have been destroyed since they are out-dated." Finally, Mr. [REDACTED] states that he was able to recognize the applicant because he and the applicant have "yearly personal contacts." Mr. [REDACTED] attested that the information that he provided was true and correct to the best of his knowledge "under penalty of perjury." Although the statement is notarized, it is not on company letterhead. The letter also 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. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in August 1981 without inspection. 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.

The director denied the application for temporary residence on July 15, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. In addition, the director noted that employment letters in the record of proceeding are inconsistent with the applicant's Form I-687. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that he first entered the United States in August 1981. The applicant explains that the employment letters from Iresa Bros. Inc. and [REDACTED] contain estimated days because more than 20 years have passed and the companies do not have payroll

records. The applicant does not explain how the employers are able to determine his exact dates of employment without payroll records considering that more than 20 years have passed since the applicant worked for these employers. Also, in his appeal brief, the applicant indicates that he received “the wrong information” from counsel but does not state counsel’s name. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Finally, the applicant argues that his testimony is credible and that “he has found other evidence and can now verify his residence.” The applicant did not include such evidence on appeal and as of this date, the AAO has not received any additional evidence from the applicant. 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.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the 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.