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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L1



FILE: [REDACTED]
MSC-05-256-34019

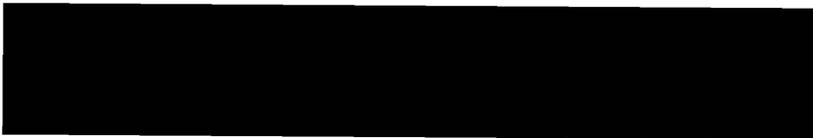
Office: LOS ANGELES

Date: **MAR 20 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:



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. K. Wiemann".

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. The director mistakenly stated that the applicant had not established an unlawful presence in the United States since prior to January 1, 1982 through May 4, 1988, instead of that the applicant had not established that he continuously resided in an unlawful status from before January 1, 1982 until he attempted to file for temporary resident status. 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. Although the director raised the issue of class membership in the decision, since the application was adjudicated on the merits, the director is found not to have denied the application for class membership.

On appeal, counsel for the applicant submitted a Freedom of Information Act (FOIA) request on behalf of the applicant, and requested an additional 30 days after receipt of the request in which to submit a brief. The record indicates that the FOIA request was fulfilled on January 8, 2008. More than thirty days has passed since the request was fulfilled, and the applicant has failed to submit additional information. As a result, the record will be considered 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)(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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his 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. 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 listed only the following address during the requisite period: [REDACTED] Pomona, California from 1986 to 1989. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Mexico for the purpose of “residence” from September 1969 to 1986. At part #33 where applicants were asked to list employment in the United States since entry, the applicant listed only the following position during the requisite period: Laborer for [REDACTED] c., from 1986 to 1990. This information all tends to show that the applicant resided outside of the United States at least

from the beginning of the requisite period until 1986, and casts serious doubt on his claim to have resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. This documentation includes numerous documents that do not relate to the requisite period. The applicant also provided multiple attestations in support of his application for temporary resident status. Many of these attestations do not specifically confirm that the applicant resided in the United States during the requisite period. These include the declarations from [REDACTED] and [REDACTED] and [REDACTED] and the affidavit from [REDACTED]. The applicant also provided two typed declarations from [REDACTED] that are unsigned and, therefore, hold no evidentiary weight.

The applicant also submitted a declaration from [REDACTED] in which the declarant stated that he has known the applicant since November 1981. The declarant stated that the applicant worked with the declarant as a part-time helper in his remodeling business from 1981 through 1988, and that the applicant lived at the declarant's home from 1981 to 1988. This information is inconsistent with the applicant's Form I-687, where the applicant failed to list employment with the declarant when asked to list all employment during the requisite period. This information is also inconsistent with the Form I-687 because the applicant only listed one address on the Form I-687 during the requisite period, and he indicated that he began residing at this address in 1986, rather than in 1981 as indicated by the declarant. These inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States throughout the requisite period.

The record also includes a Form I-687 application signed by the applicant on January 23, 1993. At part #33 of the form, where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED], Pomona, California from July 1981 to March 1987; and [REDACTED], Pomona, California from March 1987 to January 1991. This information is inconsistent with the current Form I-687, where the applicant listed only the [REDACTED] address and indicated he began living there in 1986 instead of 1987. At part #35 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Mexico for an emergency, from August 1, 1987 to August 14, 1987. This is inconsistent with the current Form I-687, where the applicant indicated he was absent from the United States until 1986 and did not depart after that time, during the requisite period. Lastly, at part #36 of the 1993 form, where applicants were asked to list all employment in the United States since first entry, the applicant indicated that he was a gardener from May 1984 to 1986 and that he worked for [REDACTED] from 1986 to 1989. This information is inconsistent with the current Form I-687, which fails to indicate that the applicant worked as a gardener during the requisite period. These inconsistencies call into question the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application the director found 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. The director referred to the applicant's interview with an

immigration officer on May 1, 2006, in which the applicant stated that he worked with [REDACTED] as a construction worker helper and did yard work in the neighborhood. The director stated that [REDACTED] was contacted on May 1, 2006 and stated that he gave the applicant a job in "the meat department." [REDACTED] also stated that he was working 48 to 50 hours per week and did not have time to have a side job as a construction worker. This information is inconsistent with the statements made by the applicant in his interview with the immigration officer. This information further calls into question [REDACTED]'s ability to confirm that the applicant resided in the United States during the requisite period.

On appeal, counsel for the applicant submitted a FOIA request on behalf of the applicant, and requested an additional 30 days after receipt of the request in which to submit a brief. The record indicates that the FOIA request was fulfilled on January 8, 2008. More than thirty days has passed since the request was fulfilled, and the applicant has failed to submit additional information. As a result, the record will be considered complete.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. He has submitted multiple attestations that fail to confirm that he resided in the United States during the requisite period or are unsigned. The declarations from [REDACTED] and [REDACTED] and [REDACTED] and the affidavit from [REDACTED] all fail to confirm that the applicant resided in the United States during the requisite period. The two typed declarations from [REDACTED] are unsigned and, therefore, hold no evidentiary weight. The applicant also submitted a declaration from [REDACTED] that conflicts with the current Form I-687.

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 statements on his current Form I-687 application indicating that he did not arrive in the United States until 1986, and given his 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.