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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 05 218 12700

Office: SAN FRANCISCO

Date: NOV 12 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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director also determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined 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.

On appeal, counsel puts forth a brief disputing the director's findings.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. See section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.

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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant only provided the following:

- A statement dated June 23, 2001, from [REDACTED] of Reseda, California, who attested to the applicant's residences at [REDACTED], Encino, California from October 1981 to October 1986, and at [REDACTED], Reseda, California from October 1986 to February 1991. The affiant asserted that he was privileged to be a friend of the applicant all these years.
- Undated letters from [REDACTED] of North Hills, California and [REDACTED] and [REDACTED] of Reseda, California, who attested to the applicant's California residences from October 1981 to October 1986 at [REDACTED] and from October 1986 to 1991 at [REDACTED]. The affiants asserted that they felt honored to know and maintain a friendship with the applicant.

The applicant also submitted other documents that have no relevance in this proceeding as they serve only to establish the applicant's continuous residence in the United States subsequent to the requisite period.

The director issued a Notice of Intent to Deny dated November 18, 2005, which advised the applicant the documents submitted failed to establish that he had entered the United States prior to January 1, 1982, and to have continuously resided since that date in the United States. The director noted that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified in their respective affidavits. The applicant was also advised that at no time did he claim that his application was not accepted or that he was discouraged from filing under the legalization program.

Counsel, in response, argued that the Notice of Intent to Deny did not accord full evidentiary credit to the witness letter. Counsel asserted the fact that the letters are alike in format is not a cogent or legitimate reason to diminish the evidentiary value of the letters. Counsel argued that the interviewing officer did not ask the applicant if he was discouraged from filing an application under the legalization program. Counsel submitted a notarized affidavit from [REDACTED], who indicated that he has personally known the applicant since October 1981 as the applicant resided with him and his parents at [REDACTED]

Encino, California from October 1981 to October 1986, and at [REDACTED] Reseda, California from October 1986 to 1991.

The director, in denying the application, noted that the applicant did not provide sufficient documents to substantiate his claimed employment, continuous residence or continuous physical presence. The applicant was once again advised that at no time did he claim that his application was not accepted or that he was discouraged from filing under the legalization program. The director noted that based on the documentation submitted and the applicant's testimony, he had failed to meet his burden of proof to establish that he had attempted to file an application between May 5, 1987 and May 4, 1988.

Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

CIS has determined that affidavits from third party individuals may be considered as evidence of continuous residence. See *Matter of E-- M--*, supra. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, supra, the affidavits would not necessarily be fatal to the applicant's claim, if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through May 4, 1988, as he has presented contradictory and inconsistent documents, which undermines his credibility. Specifically:

The applicant claimed to have worked as a laborer during the requisite period, but failed to provide the name and address of his employers. It is noted that in his initial Form I-687 application signed May 18, 1990, the applicant claimed to have been self-employed as a laborer. The applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F.R. § 245a.2(d)(3)(i).

[REDACTED] and [REDACTED] provide no details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. [REDACTED], in his initial affidavit, made no mention of the applicant residing with him and his parents during the requisite period until after the applicant received the Notice of Intent to Deny. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the discrepancy. The new affidavit from the affiant is unaccompanied by any cogent explanation from him as to why his reference to the applicant residing with him was not made in his initial affidavit. As such, the new affidavit from [REDACTED] have little probative value or evidentiary weight.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from four family members concerning that period. 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 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 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.

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