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

PUBLIC COPY

L,

FILE:

MSC-05-266-10474

Office: MIAMI (JACKSONVILLE)

Date:

SEP 18 2008

IN RE:

Applicant:

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.

A handwritten signature in black ink, appearing to read "D. C. Wiemann", written over a horizontal line.

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 of the Jacksonville Office, which is under the Miami District Office. 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. Specifically, the director stated that the evidence the applicant submitted in support of his application was not sufficient to meet his burden of proof. Therefore, she determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he began to reside in the United States in March 1981. He states that he helped his sister throughout his residence in the United States because she was in an abusive relationship. He states that when he was in Mexico in 1997, his brother-in-law took the lives of both his mother and his sister. He asserts that because the apartment had become a crime scene, the applicant's documents were taken from the apartment. He asserts that he and his other sister obtained custody of their nephews at that time. He submits additional evidence in support of his application.

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) 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 23, 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 did not indicate any addresses of residence in the United States during the requisite period. The first residence that he indicated on his Form I-687 was in San Diego beginning in March 1995. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period when he traveled to Mexico for an unspecified emergency during the year 1987. He did not indicate the dates associated with this absence. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he indicated that he had worked for various companies, but did not indicate dates associated with any employment.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is not eligible to adjust to temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"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).

The record also contains the record of a misdemeanor conviction. The record indicates that the applicant was convicted of a violation of the California Vehicle Code 23152(a), *Driving under the influence of alcohol or drugs*. (Case Number [REDACTED])

The applicant's conviction of one misdemeanor offense alone does not render him ineligible to adjust to temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.2(c)(1).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence that is relevant to his residence in the United States during the requisite period:

- A declaration from [REDACTED] that is dated October 25, 2006. The declarant states that the applicant entered the United States in 1981 and has resided in San Diego since that time. He states that when he was a child, his mother would tell him about how the applicant helped her. He states that when his mother passed away in 1997, the applicant became his

guardian. Though this affiant states that his mother talked about the applicant, he does not state the frequency with which he himself saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant. Because this affidavit is lacking in detail, it can be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] that is dated October 19, 2006. The affiant states that she has known the applicant since 1981. She states that the applicant has resided in the United States in San Diego since 1981. She states that she saw the applicant often. However, she did not indicate the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time when she did not see the applicant during that time. Because this affidavit is lacking in detail, it can be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that is dated October 10, 2006. The affiant states that she has known the applicant in the United States since 1981. She states that she met him through his sisters and that she sees him very often. She states that she has seen the applicant at reunions and birthday parties. However, she fails to indicate the frequency with which she saw the applicant during the requisite period or to indicate whether there were periods of time during that period when she did not see the applicant. Because this affidavit is lacking in detail, it can be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that is dated October 15, 2006. The affiant states that he has known the applicant in the United States since 1981. He states that the applicant resided in San Diego since that time. He states that he met the applicant through his work as a landscaper. However, he does not state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant. Because this affidavit is lacking in detail, it can be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

It is noted that the applicant has also submitted W-2 Forms and pay stubs that were issued to him at residences in the United States on dates subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to allow him to meet his burden of proving that he resided in the United States for the duration of the requisite period. As these documents do not pertain to the requisite period, they are not relevant evidence for this proceeding. Therefore, they are not discussed here.

The director denied the application for temporary residence on December 27, 2006. In denying the application, the director noted that the applicant did not submit contemporaneous evidence in

support of his application. The director stated that she found the applicant failed to meet his burden of proving that he resided in the United States for the duration of the requisite period.

It is also noted that the director stated that the applicant filed his Form I-687 after the filing deadline ended, as he filed his application on June 23, 2005. However, the AAO notes that though the original filing deadline for Form I-687 applications filed pursuant to the CSS/Newman Settlement Agreements was May 23, 2005, on May 16, 2005 CIS issued a Press Release that stated that CIS extend the filing deadline for Forms I-687 filed pursuant to the CSS/Newman Settlement Agreements until December 31, 2005. Therefore, the AAO finds that the director's statement that the applicant filed his Form I-687 late was made in error.

On appeal, the applicant submits a statement dated January 3, 2007. Here, he states that he first entered the United States in March of 1981. He states that he was concerned about his sister [REDACTED] because she was in an abusive relationship with her husband. He states that while he was in Mexico in 1997, he learned that his sister had been killed by her husband. He states that when he re-entered the United States after learning of his sister's death, because the apartment where his brother-in-law took his sister's life was a crime scene, police took documents from the apartment. He states that as of the date of this statement, he has not been able to obtain documents that were in the apartment at the time of the crime. He states that he became the guardian of his nephews after the death of his sister.

The applicant resubmits the affidavit from his nephew [REDACTED] and further submits a court document dated September 15, 1997. This document indicates that the applicant was granted guardianship of three children on that date.

Though the applicant indicates that many documents that purportedly would have otherwise been submitted in support of his application were taken by police in 1997, the regulations specify that 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted affidavits from four individuals, all of which contained minimal details such that they were not sufficient to satisfy his burden of proof. Though he also submitted Forms W-2 and numerous pay stubs, none of these documents pertained to the requisite period. Further, the applicant did not indicate employment or addresses of residence on his Form I-687, casting doubt on whether he was employed or resided in the United States during the requisite period.

In this case, the absence of sufficiently detailed, probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the absence of testimony on his Form I-687, 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 sufficiently detailed supporting documentation, it is concluded that he 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.