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U.S. Citizenship  
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Services

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FILE:

MSC 06 029 11362

Office: DALLAS

Date: SEP 24 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 "R. 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 Field Office Director, Dallas, Texas. The matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, the applicant reiterated his claim of qualifying residence and submitted additional evidence.

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 (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). To meet his or her

burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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.

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.

On the Form I-687 application, which the applicant signed on October 19, 2005, the applicant stated that he was born on September 26, 1967 and last entered the United States on January 20, 1985. The applicant was required, on that application, to provide an exhaustive list of his residences in the United States since his first entry. The applicant provided a history of his residences since October of 1988. The applicant did not indicate that he had lived in the United States during the period of requisite residence.

The applicant was required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. The applicant provided a history of his employment since November 1988. The applicant did not indicate that he had worked in the United States during the period of requisite residence.

The pertinent evidence in the record is described below

- The record contains an affidavit, dated November 9, 2006, from [REDACTED] of Hereford, Texas. The affiant stated "that to his personal knowledge" the applicant lived in Los Angeles, California from May 1982 to December 1996 and thereafter in Hereford, Texas. The affiant further stated,

The applicant is a childhood friend. We know each other from [REDACTED] Mexico. I lived in Los Angeles at the same time as he. He moved to Hereford, TX in December of 1996 and we kept in touch. He encouraged me to move to Hereford three years ago and to this day, we remain friends.

The affiant added, "I did not personally see [REDACTED] until I moved to Hereford, TX, but we have always kept in touch." When the affiant is claiming to have first had personal contact with the applicant in the United States is unclear, as is his basis for the assertion that, to his own personal knowledge, the applicant lived in Los Angeles from May 1982 through December 1996.

- The record contains a form affidavit, dated February 13, 2003, from [REDACTED] Valles of Los Angeles California. The affiant stated that he is the applicant's cousin, and that he knows that the applicant has been living in the United States, in Los Angeles, California, since October 1989.
- The record contains a form affidavit, dated October 30, 2006, from [REDACTED] California, who stated that the applicant is her nephew. She further stated that the applicant came to live with her during May of 1982 and lived with her through December 1996. This office notes that, on the Form I-687, the applicant did not state that he lived in the United States until October 1988. He stated that he lived at three different addresses from October 1988 to December 1996, and at [REDACTED] Angeles only from November 1989 to December 23, 1990.
- The record contains a notarized letter, dated November 8, 2007, from [REDACTED] whom the applicant stated is his aunt. That letter is in Spanish and was not accompanied by the English translation required by 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.
- The record contains a declaration, dated November 12, 2007, from [REDACTED] of Austell, Georgia. That declarant stated that the applicant is his cousin and lived in the declarant's mother's house from May 1982 through 2006. He also asserted that everything in the letter from his mother, apparently meaning [REDACTED], is true. Although that declaration is subscribed with what purports to be a notary public's signature and seal, the ostensible notary did not indicate that she administered an oath to the declarant. As such, that declaration is not an affidavit and will not be accorded the additional evidentiary credibility generally accorded to affidavits and other sworn statements. Further, the failure of an ostensible notary to administer an oath or her lack of familiarity with the usual form of a notary's attestation raises the suspicion, at least, that the person who placed the ostensible notary's signature and seal on that document is not, in fact, a notary.
- The record contains a 1988 Form W-2 Wage and Tax Statement showing that [REDACTED] Incorporated, of Los Angeles, California, paid the applicant \$512.13 for work he did during that year, and that the entire amount of those earnings was declared as income for social security purposes. This office notes that the applicant stated, on the Form I-687 application, that he began working for that company during November of 1988, after the end of the period of requisite residence, and the amount shown on the W-2 form is consistent with employment during less than two months of that year. The W-2 form is not, therefore,

convincing evidence that the applicant worked in the United States during the period of requisite residence.

- The record contains a copy of the applicant's Social Security Statement, issued on May 20, 2005. That statement indicates that the applicant had social security earnings during every year from 1989 to 2004, but not during previous years. Why the applicant's 1988 W-2 form from Mallin Co. Incorporated shows that the applicant declared social security earnings during that year, whereas the social security statement indicates that he did not, is unclear to this office.
- The record contains a notarized letter, dated August 29, 2005, from the applicant. In that letter, the applicant stated, under oath, "I have been in the United States since I was 17 year [sic] old (1985)." Given that he was born on September 26, 1967, the applicant would have been 17 years old during most of 1985. If the applicant began his continuous residence in the United States during that year, however, then the instant application may not be approved.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated August 30, 2007, the director stated that the applicant failed to submit evidence sufficient to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director accorded the applicant thirty days to submit additional evidence.

In response the applicant submitted additional copies of evidence already submitted and photocopies of his affiants' identification. In the Notice of Decision, dated October 27, 2007, the director denied the application based on the reasons stated in the NOID.

On appeal, the applicant submitted the untranslated November 8, 2007 notarized letter from [REDACTED] and the November 12, 2007 declaration of [REDACTED] both of which are described above.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

None of the applicant's evidence suggests that the applicant entered the United States prior to January 1, 1982. The declarations and affidavits place him in the United States no earlier than 1982. The February 13, 2003 form affidavit from [REDACTED] appears, in fact, to imply that the applicant did not enter the United States until October 1989. The earliest W-2 form in the record pertains to 1988. The applicant's social security statement does not suggest that the applicant was in the United States prior to 1989. The applicant himself, in his sworn August 29, 2005 letter stated that he began living in the United States during 1985.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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