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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

41

FILE:

[REDACTED]

Office: LOS ANGELES

Date: APR 22 2009

MSC 05 175 10888

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting 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, 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 denied the application finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant requests that his case be reconsidered. The applicant provided additional documentation with the appeal for consideration.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by family and friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudicating officer's notes reveal that during the Form I-687 application interview on February 26, 2007, the applicant claims to have entered the United States in 1977 or 1978 without a visa at San Ysidro, California. In response to the director's Notice of Intent to Deny (NOID), the applicant states that he first came to the United States in 1977 and lived continually to 1987.

The director accurately set forth a legitimate basis for denial of the application. With the exception of the affidavit from the applicant's sister, [REDACTED], on appeal, the applicant resubmitted a copy of the same affidavits from [REDACTED] and [REDACTED] that were submitted when filing his Form I-687 application. The affidavit from [REDACTED] and the other evidence provided with the appeal are not relevant to the requisite period and do not establish the applicant's presence in the United States since before January 1, 1982 and during the requisite period.

The affidavit from his sister, [REDACTED] states that from her personal knowledge, the applicant has resided continually in the United States since 1977. The affiant does not explain how she acquired such knowledge and does not give any other information about her brother and their personal relationship although she claims to have entered the United States one year after him. The affidavit does not contain sufficient information to support the applicant's claim.

[REDACTED] and [REDACTED] do not explain in their affidavits how they met the applicant. With the exception of listing the applicant's places of residence during the requisite period, the affiants fail to indicate any other details that would lend credence to the claimed relationship. In another affidavit, [REDACTED] states that the applicant is his brother-in-law and attests to the applicant's good moral character. The affiants provide no other information regarding the applicant's entry into the United States. The affidavits lack the detail required to establish their credibility.

Upon review, the affidavits do not include sufficient detailed information about the applicant's continuous residency in the United States. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period.

The affidavits do not contain concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they are a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavits provided by the applicant do not contain sufficient detail to establish the reliability of their assertions.

The applicant also submitted copies of 12 stamped envelopes. However, the probative value of these envelopes is limited in that the postmark dates are either not legible or not within the requisite period. Further, the documents are photocopies rather than originals. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.2(d)(6). The stamped envelopes do not establish the applicant's continuous residence throughout the requisite period.

The applicant's remaining evidence consists of copies of photographs but the photos are not dated and the persons in the photos have not been identified by name. The record also contains a copy of two of the applicant's DMV California identification cards, one with an expiration date of 1981 and another one issued May 28, 1987. While the identification cards are accepted as some evidence of the applicant's presence during some part of the requisite period, copies of photographs and the

applicant's identification cards do not establish the applicant's continuous residence throughout the requisite period.

The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

Moreover, the record reveals that the applicant was arrested and charged with driving with a suspended license and under the influence on April 29, 2005. USCIS adjudicating officer's notes also reveal that the applicant was arrested two times, once for driving under the influence and the second charge is not identified. The applicant did not submit final court dispositions indicating the resolutions of these arrests. Therefore, the applicant has not proved that he is admissible to the United States and for this reason as well, is not eligible for temporary residence in the United States.

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