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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES Date: AUG 13 2009

MSC 06 098 24205

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.

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 disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence.

On appeal, the applicant states that he never left the United States to register the birth of his daughter, [redacted]s and his son, [redacted] The applicant explains that his mother, [redacted], registered the births of their children. The applicant also explains that the United States Citizenship and Immigration Services (USCIS) failed to consider several affidavits that attested to knowing the applicant's entry and continuous residence in the United States from 1979 to present.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) had not disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and if so, had shown emergent reasons for the length of absence.

During the Form I-687 application interview, the applicant stated that he entered the United States with his spouse in April 1979 through San Ysidro. The applicant stated that they departed the United States on April 15, 1982 to get married in Mexico and returned to the United States on April 29, 1982. The applicant also claimed that they went back to Mexico on June 12, 1982 for the birth of their oldest child and returned on July 5, 1982.

In a request for evidence (RFE), the director requested that the applicant submit evidence of his continuous residence and presence in the United States since prior to January 1, 1982 through the

requisite period, the original birth certificates of his children born in Mexico and a letter of employment.

In his response to the director's RFE, the applicant provided an employment letter and copies of his pay stubs, his children's birth certificates, an affidavit from his spouse attesting to the fact that her mother-in-law registered their children's births and a declaration from the applicant's mother, Ms. stating that she registered before the civil registry and has provisional guardianship and custody of her grandchildren, born June 29, 1993; born February 3, 1986; and born July 21, 1982. However, the original birth certificates of and show that their births were registered in Mexico on September 21, 1982 and February 24, 1986, respectively, by both parents.

By his own admission, the applicant states that he and his spouse, , were in Mexico on June 12, 1982 for the birth of their oldest child. It is also evident from the children's birth certificates that the applicant and his spouse were in Mexico on September 21, 1982 to register the birth of and on February 24, 1986, to register the birth of their second child, . Absent an explanation or other evidence, the applicant has not established that he did not remain outside the United States for over 90 (June 12, 1982 – September 21, 1982) days. No explanation and evidence was provided with the Form I-687 application and during the interview to show that the applicant's delayed reentry into the United States was due to emergent reasons. Therefore, the applicant has disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and has not shown emergent reasons for the length of the absence.

This application cannot be approved for another reason. The applicant has not provided credible evidence to establish that he 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. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

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.

The applicant submitted several declarations from friends to establish his initial entry and residence in the United States during the requisite period. [redacted] and [redacted] state that they first met the applicant in 1984 when he sold donuts in El Monte, California. The declarants state that they first entered the United States in 1984 and that the applicant told them that he entered the United States in 1979 through San Ysidro and resided in Los Angeles, California. The declarants' knowledge concerning the applicant's date of entry and residence did not come from their own personal knowledge of the event. The declarants have not provided any other information about the applicant.

states that she met the applicant while employed as a nursing assistant at Santa Anita Convalescent Hospital located in Arcadia, California. Her daughter, , also claims to have met the applicant while her mother, , was employed at the hospital. The declarants state that the applicant was the gardener at the hospital and that he rented home located at Los Angeles, California, from June, 1979 to December, 1996. The applicant provided no evidence of his employment at the Santa Anita Convalescent Hospital located in Arcadia, California. Further, there is no evidence of a formal lease or rent receipts for the time period the applicant occupied the home of . states that the applicant's wife was her babysitter, occasionally, from 1981 through 1986 but no evidence of her employment has been provided. The declarants claim that they often see the applicant at social gatherings but do not mention any of the activities they have shared. The declarants also attest to the applicant's good moral character but have not provided any other information about the applicant.

The declarations do not include sufficient detailed information about the claimed relationships spanning over 30 years and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, hobbies and shared activities. The declarants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The declarations do not provide 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 were 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. Therefore, the affidavits have little probative value.

Upon review, the AAO finds that the applicant has not provided any evidence to establish that his absence from the United States for more than 45 days was due to an emergent circumstance. The applicant had a break in any continuous residence and is not eligible for status as a temporary resident. Further, the declarations do not contain sufficient detail to establish the reliability of their assertions. The declarations are 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 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.

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