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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: FRESNO Date: FEB 0 4 2009
MSC 05 236 17327

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, Fresno. 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the applicant admitted during his legalization interview that he first entered the United States in 1983, and that he left the United States in 1986 for a period of one year. The application was accordingly denied.

On appeal, the applicant states that he illegally entered the United States in 1981, and that he remained in this country except for one brief departure in 1987. The applicant states that he provided inaccurate information during his legalization interview because of a faulty memory. The applicant asks that the director's decision be reversed and that his application be approved.

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 issue in this proceeding is whether the applicant (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 record contains the following evidence which is material to the applicant's claim:

- [redacted] submitted a statement on behalf of the applicant that is neither sworn to nor notarized wherein she states that the applicant lived in her home from May of 1983 until October of 1983, paying room and board.

- The applicant submitted a sworn statement from [redacted]. wherein [redacted] states that the applicant was employed by his farm labor contracting firm from November of 1981 through December of 1987. The witness further states that the applicant worked a total of 100 (estimated) days each year performing agricultural duties. The witness states that he is unable to provide payroll records since such documents were completely destroyed in a fire.

Applicant's Statement

- On February 20, 2007 the applicant attended a legalization interview and issued a statement to a United States immigration officer. The applicant signed the notes taken from that interview. In the applicant's interview, he stated, in pertinent part, that: he first entered the United States in 1983; and that he left the United States in 1986 for a period of one year.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January of 1982 and lived in an unlawful status during the requisite period consists of one witness statement, an employment attestation and his personal statement. The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statement provided by the applicant states only that the applicant lived with the witness for a period of five months in 1983. It provides no additional information about the applicant's activities or whereabouts during the requisite period. The statement is neither sworn to nor notarized. It is, therefore, of little probative value and does not establish the applicant's residence during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statement provided is of little evidentiary value as it does not comply with the above cited regulation. The statement does not: provide the applicant's address at the time of employment; identify the exact period of employment; or show periods of layoff (if any). The statement does not establish the applicant's residence for any portion of the requisite period.

Finally, the applicant admitted at his legalization interview that he first arrived in the United States in 1983. The applicant was not, therefore, in the United States prior to January 1, 1982, which disqualifies the applicant from the immigration benefit sought. Further, the applicant admitted in his legalization interview that he left the United States in 1986 for a period of one year. This represents a disruption of the applicant's claimed continuous residence, which is also a disqualifying factor. The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

> (h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:
>
> (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty

> (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;
>
> . . . .

In view of the above regulation, the applicant has failed to establish continuous residence during the requisite period because his one year absence from the United States exceeded, by his own admission, 45 days for a single occurrence, and 180 days during the requisite period. The record does not establish that the applicant's return to the United States within the time permitted for "continuous residence" absences could not be accomplished due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The "emergent reasons" must be unexpected at the time of departure from the United States and of sufficient magnitude that the applicant's return within the time permitted for continuous residence made returning more than an inconvenience, but practically impossible. The applicant stated during his interview that he left the United States to see his family. The applicant provided no evidence of emergent reasons preventing his return to this country.

The applicant's own admissions, as well as the absence of sufficiently detailed documentation to corroborate his claim of continuous residence for the entire requisite period 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 applicant's admissions and his reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States for the duration of the requisite period.

Therefore, based upon the foregoing, the applicant 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.