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FILE: [REDACTED]
MSC-06 033 12542

Office: NEW YORK CITY

Date: **JUL 02 2009**

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:



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 in New York City. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant a native of Ecuador, who claims to have lived in the United States since 1981, 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 on November 2, 2005. The director denied the application, finding (1) 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 (2) that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits.

On appeal the applicant asserts that he has submitted sufficient evidence to establish his continuous residence in the United States and that he timely submitted documentation for determination as a class member in one of the legalization class action lawsuits.

The AAO notes that in the Notice of Intent to Deny (NOID) dated September 7, 2006, the director did not notify the applicant of her intention to deny the applicant on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits as required under the settlement agreement. The AAO further notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Thus, the director's decision to deny the application on the ground that the applicant did not establish that he is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn.

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).

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 periods, 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, 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the following:

- A letter from [REDACTED] of Church of St. Bartholomew in Elmhurst, New York, dated October 16, 2005, stating that the applicant had been a member of the parish since 1994, that the applicant is personally known to him and that he knew the applicant came to the United States in 1981.
- A letter from [REDACTED], secretary (2004-05) of Elmhurst Ecuadorian Society of New York in Elmhurst, New York, dated October 21, 2005, stating that the applicant became a member of the organization in 1996, that the applicant is personally known to him and that he knew the applicant came to the United States in 1981 with his parents.
- Affidavits – dated in 2005 – from individuals who claim to have known the applicant resided in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988. It is noted that the applicant, who claims to have entered the United States with his father in 1981, was about 6 years old in 1981. The applicant did not submit any documentation from his father to establish such entry or any other evidence such as school records, hospital or medical record, which is expected from a child of 6 to establish his residence in the United States. Also, the applicant did not submit any evidence from his father or another adult guardian to show who was responsible for his care and wellbeing during his minor years.

The letters from Church of St. Bartholomew and Ecuadorian Society in New York, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The authors stated that the applicant had been a member of the church and the society since 1994 and 1996, respectively. The authors further stated that the applicant was personally known to them and that they knew the applicant has been residing in the United States since 1981. None of the authors specified the source of their information that the applicant has been residing in the United States since 1981. None of the authors stated where the applicant lived at

any point during the 1980s. None of the authors indicated how and when he met the applicant, and whether their information about the applicant was based on personal knowledge, the organizational records, or hearsay. Since the letters did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the date of filing the application.

The affidavits in the record – dated in 2005 – from individuals who claim to have known the applicant resided in the United States during the 1980s, have minimalist formats with little personal input by the affiants. The affiants only provided the addresses claimed by the applicant in the United States from 1981 through 1991 (in one instance). Considering the length of time they claim to have known the applicant – in most cases since 1981 – and the fact that the applicant was only 6 years old in 1981, the affiants provided very little information about the applicant's life in the United States, such as who he lived with, who cared for him, the schools he attended, and the nature and extent to their interactions with him over the years. Nor are the affidavits accompanied by documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In addition, none of the affiants provided documentation of their own identities and residence in the United States during the requisite period. For the reasons discussed above, the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of filing the application.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 on this basis.

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