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U.S. Citizenship and Immigration Services  
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U.S. Citizenship and Immigration Services

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FILE: MSC-06-082-13924

Office: MIAMI

Date: JUN 30 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: 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, New York, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining 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. 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.

On appeal, the applicant asserts that the denial is contrary to the terms of the law and is an abuse of discretion. The applicant does not submit any new evidence on appeal.

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. See 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).

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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of medical reports, bank statements, vehicle registration documents, social security statement of earned income from 1993 to 2003, one of his children’s baptism certificate, immunization records and school records, and other business documents that are dated subsequent to the requisite period and are therefore, insufficient as proof of the applicant’s continuous residence in the United States since before January 1, 1982.

The applicant submitted a statement of services from National Executive Search, Inc. (a career placement agency) of Washington, DC that was signed by the applicant in June of 1981. He also submitted a copy of a receipt for his application for a Social Security Number dated October 29, 1981 and a photocopy of his Florida Driver License dated October 28, 1981. The applicant submitted a confirmation letter dated August 18, 1981 and addressed to him from [REDACTED] regarding a lease and maintenance agreement. This evidence demonstrates the applicant’s presence in the United States in 1981 but is insufficient to establish his continuous residence in the United States throughout the requisite period.

The applicant submitted the following evidence:

- An affidavit from [REDACTED] of St. Anthony Catholic Church in Fort Lauderdale, Florida who stated that the applicant has been an active parishioner of the church since 1984. The statement is inconsistent with the applicant's Form I-687 application at part #31 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and he did not list any. In addition, the affidavit does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership; it does not state the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).
- A declaration dated February 14, 2007 from [REDACTED] of Florida Professional Property Management, Inc. who stated that he has known the applicant since the early 1980's and that during that period of time he employed the applicant to perform various construction services for his company and for him personally. This statement is inconsistent with the applicant's Form I-687 application at part #33 where he didn't state that he was ever employed by the declarant. In addition, the letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).
- A declaration from [REDACTED] who stated that he has known the applicant, who resided at the Horizon Hotel, since approximately 1983. He also stated that the applicant was the maintenance man at the hotel. Although the declarant states that he has known the applicant since 1983, his statement does not supply enough details to lend credibility to an at least 20-year relationship with the applicant. For instance, the declarant does not indicate how frequently he had contact with the applicant, or how he had personal knowledge of the applicant's presence in the United States. Further, the declarant does not provide the applicant's address during the requisite period. The applicant also fails to list the address of the Horizon Hotel on his Form I-687. Given these deficiencies, the declaration has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1981, and that he has been employed by the applicant since 1990. Here, the affiant fails to specify the frequency with which he communicated with the applicant or the applicant's place of residence during the requisite period. Although the affiant states that he has known the applicant since 1981, his statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant.

A declaration from [REDACTED] who stated that she remembers the applicant being at the Tropic Cay Motel for several years and that her father, who is now deceased, was the owner of the motel. She also stated that through the years, she has come in contact with the applicant on occasion, and sometimes at church. She does not specify the dates of the applicant's work, or the applicant's residence during the time he worked for her father.

None of the witness statements 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 declarations must do more than simply state that a declarant 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detracts from the credibility of this 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 reliance on documentation that is lacking in detail and probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.