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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-06-030-10688

Office: LOS ANGELES

Date: **MAR 11 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:

[REDACTED]

**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 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He states that he has worked in the United States since 1974 and submits additional evidence in support of his application.

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 has establish 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 that he arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of a photocopy of his Social Security Administration earnings statement and a statement from the applicant. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

On October 30, 2005 the applicant filed his I-687 Application. He initially failed to submit evidence in support of that application.

On November 28, 2005, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID). In the NOID, the director stated that because the applicant failed to submit

evidence that: 1) he entered the United States before January 1, 1982 and then resided in a continuous unlawful status, except for brief absences from before 1982 until the date that he was turned away by the former Immigration and Naturalization Service (INS) when he tried to apply for legalization; 2) that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date he was turned away by the INS when he tried to apply for legalization, and; 3) that the applicant is admissible as an immigrant. The director granted the applicant 30 days within which to submit evidence that he met these requirements.

In response, on December 14, 2005 counsel submitted a letter stating that the applicant requested additional time to gather evidence necessary to establish that the applicant was eligible to adjust to temporary resident status.

On July 6, 2006, the director issued a denial notice. In the denial, the director stated that because no evidence except counsel's correspondence as noted above was received in response to the NOID, the applicant failed to satisfy his burden of proof.

On appeal, the applicant submits a statement and a photocopy of his Social Security Administration earnings statement.

In his statement, the applicant indicates that he first entered the United States in 1972 and began working in the United States in 1974. He asserts that he worked as a farm laborer from 1982 until 1986 and that he delayed his submission of documents because he was attempting to obtain documents from a ranch in Texas, where he previously worked. He also states that he attempted to apply for legalization during the original filing period in 1987. It is noted that this indicates that under the Settlement Agreements, the applicant must establish that he resided continuously in the United States from a date before January 1, 1982 until an unspecified date in 1987. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The Social Security Administration earnings statement indicates that the applicant earned income in the United States during all years of the requisite period. While it does not indicate that the applicant earned income in 1988, as previously noted, the applicant states that he attempted to file for legalization in 1987. Therefore, he does not need to establish that he resided continuously in the United States in 1988. It is noted that the birth date indicated on the applicant's earnings statement is May 20, 1945, which does not correspond with the applicant's claimed June 3, 1945 date of birth on his Form I-687.

The applicant has also submitted both his birth certificate, in Spanish, and its English translation. Both the Spanish and the English version of the birth certificate state that the applicant was born on May 20, 1945. However, the first date stated on the Spanish version of the birth certificate is June 3, 1945, which is the date the applicant's birth was registered. It appears that the individual

who completed the applicant's Form I-687 may have erroneously indicated the applicant's birth registration date rather than his birth date on that form.

However, in reviewing the Social Security Administration earnings statement, the AAO noted that earnings for the applicant during the requisite period varied greatly during the years 1984, when the applicant earned \$20,213.00 and 1985, when he earned \$717.00. Because of both this discrepancy in earnings, which is a possible indicator of an absence from the United States, and because the applicant indicated in his statement that he was in the process of gathering evidence from a ranch in Texas, on January 13, 2009 the AAO requested that the applicant submit additional evidence as proof of his continuous residence in the United States during the requisite period. The AAO afforded the applicant a period of 30 days from the date of this request for evidence. In doing so, the AAO noted that if no such evidence was received within that period, the AAO would dismiss the applicant's appeal, as the evidence currently in the record does not allow the applicant to satisfy his burden of proof.

As of the date of this decision, the AAO has not received a response to the request for evidence. Therefore, in this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 lack of credible supporting documentation, it is concluded that he 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.