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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC-05-222-10585

Office: LOS ANGELES

Date: MAY 05 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was insufficient to support the applicant's claim that he had resided in the United States continuously throughout the requisite period.

On appeal, counsel for the applicant claims that the director violated Paragraph 7 of the CSS/Newman Settlement Agreement by not issuing a Notice of Intent to Deny (NOID) and not giving the applicant an opportunity to present additional evidence and rebuttal argument before the final decision was rendered. Further, counsel indicates that the applicant has presented credible evidence, sufficient to meet his burden of proving by a preponderance of the evidence that he is eligible for the benefit sought.

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)(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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be

accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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.

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 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.

On appeal, counsel claims that the director violated Paragraph 7 of the CSS/Newman Settlement Agreement in that he failed to issue a NOID before rendering his final decision. In pertinent part Paragraph 7 of the CSS/Newman Settlement Agreement states: Before denying an applicant for *class membership*, the applicant . . . shall be sent a notice of intended denial explaining the perceived deficiency in the applicant's class membership application and providing the applicant

30 days to submit additional written evidence or information to remedy the perceived deficiency (emphasis added).

Here, the director denied the application due to the insufficiency of the evidence submitted by the applicant to support his claim of continuous residence in the United States throughout the requisite period. The director adjudicated the Form I-687 application, thereby treating the applicant as a class member. Based on these facts, the director was not required to first issue a NOID and did not violate Paragraph 7 of the CSS/Newman Settlement Agreement.

The sole issue in this proceeding is whether the applicant has furnished sufficient evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

To prove that he has resided and worked in the United States continuously since before January 1, 1982, the applicant submitted eight affidavits, photocopies of money orders, and photocopies of receipts for registered mail and envelopes, postmarked for the years 1978, 1982, 1983, and 1987.

The photocopies of money orders and the receipts for registered mail show no name and address of either the applicant, the sender(s), or the recipient(s), and thus are not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period. The postmarks on the copies of the envelopes are indiscernible. Additionally, the envelopes are not sent to the applicant's address in the United States, thus they are not probative as proof of the applicant's residence in the United States during the requisite period.

The eight affidavits generally state that the affiants have known the applicant since 1981 or 1982. Some affiants state that they were the applicant's co-workers in 1981; others claim to have been acquainted with the applicant since 1982. None of them, however, provides detailed information about where the applicant worked or lived in the United States during the requisite period or offers other details about the applicant's life in the United States to establish the credibility of their assertions. To be considered probative and credible, 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. Because these affidavits lack specific detail concerning the applicant's residence and work in the United States, they lack probative value and have minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record detract 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 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.

Beyond the decision of the director, the applicant is ineligible for temporary resident status because of his stated absence from the United States for more than 45 days between October 30, 1987 and February 1, 1988. In a sworn statement dated May 11, 1999, the applicant stated that he had continuously resided in the United States since February 15, 1981 through the date he attempted to file the application in March 1988. Under the regulations, the applicant for temporary resident status is required to maintain continuous residence in the United States from before January 1, 1982 until the date of filing, which means until the date he filed or attempted to file the application. If the applicant left the United States for more than 45 days during that period, his residence in the United States would not have been continuous and he would not be eligible for the benefit sought, unless return could not have been accomplished due to emergent reasons. Since his absence from October 1987 to February 1988 is more than 45 days and because the applicant fails to submit evidence to show emergent reasons for his untimely return, the application may not be approved for this additional reason.

Moreover, the application may not be approved due to the applicant's three misdemeanor convictions. According to the records from the Municipal Court of Huntington Park, County of Los Angeles, on January 8, 1996, the applicant was convicted of two misdemeanors, for forgery and for displaying or possessing a canceled, revoked, altered, or fraudulent license, in violation of California Penal Code section 472 and California Vehicle Code section 14610(a)(1), respectively [REDACTED]. Further, on September 3, 2003, the applicant was convicted in the Superior Court of California, County of Los Angeles of driving or operating a taxicab without having a franchise granted by the City of Los Angeles in violation of Los Angeles Municipal Code section 71.02(b), a misdemeanor violation [REDACTED]. As the applicant has been convicted of three misdemeanors, pursuant to the regulations at 8 C.F.R. § 245a.2(c)(1); 8 U.S.C. § 1255a(a)(4); INA § 245A(a)(4), the applicant is inadmissible and thus, ineligible for temporary resident status. For this additional reason, the application may not be approved.

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