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FILE: [REDACTED]
MSC 06 101 14938

Office: LOS ANGELES

Date: NOV 03 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 if your case was remanded for further action, you will be contacted.


Perry Rhew
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 director denied the application for temporary residence (Form I-687) on July 31, 2007, because the applicant did not establish by a preponderance of credible, probative evidence that he entered the United States on or before January 1, 1982, and remained here in an unlawful status for the requisite period. The director also noted that the applicant failed to provide final court dispositions for a number of arrests incurred in the state of California. The director concluded that the applicant had not met his burden of proof to establish eligibility for temporary resident status pursuant to the terms of the settlement agreements.

The applicant represents himself on appeal. The applicant does not offer new evidence to establish when the applicant first entered the United States, but recites facts and discusses evidence previously submitted with the Form I-687. The applicant asserts that he has been living in the United States unlawfully since 1981 and that he is admissible as well as otherwise eligible for temporary resident status.

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)(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).

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.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

Additionally, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to temporary resident status. 8 C.F.R. § 245a.2(c)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if

any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The AAO has reviewed all of the evidence in the file in its entirety. The documentary evidence submitted by the applicant to establish continuous residence includes federal tax returns for 2003 to 2005, an employment letter indicating employment commencing in 1998, W-2 statements for 2004 and 2005, a bank statement and a property tax bill for 2004, and utility bills for 1994. The only evidence that the applicant submitted to corroborate his residence in the United States for the requisite period is a photocopy of a Social Security Earnings Summary commencing in 1970 up to and including 2004. However, we note that the statement reveals extremely modest earnings for the qualifying years of 1982 through 1988. Although the earnings summary is some evidence of the applicant's presence in the United States, it is not conclusive that he resided here continuously for the qualifying period. The majority of the documentary evidence is outside of the requisite period and thus has little probative weight.

The applicant states on the Form I-687 that his first residence in the United States was located at [REDACTED] from January of 1981 to January of 1988, and thereafter resided at [REDACTED] from January of 1988 to September of 1994. The applicant submitted no documentary evidence to corroborate this assertion, *i.e.*, rent receipts, utility bills, insurance statements, bank accounts, sales receipts, statements from friends or neighbors, school or medical records, or any other documents, beyond his own assertions, that this information regarding his residence is probably true.

Next, the applicant stated on the Form I-687 that he was employed at a number of different establishments commencing in January of 1981 through November of 1986. These employers include [REDACTED]

[REDACTED] and [REDACTED]. However, the record before the AAO contains no documents from any of the listed employers to corroborate the applicant's record of employment, other than W-2 statements that are outside of the requisite time frame and consequently not relevant.

As noted above, the burden is on the applicant to prove 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. Having reviewed all of the evidence submitted by the applicant, the AAO concludes that he has not met his burden of proof with credible, probative, independently verifiable evidence that he entered the United States on or before January 1, 1982, and remained here for the qualifying period. We affirm the director's conclusions regarding entry, residence, and physical presence during the requisite period.

Additionally, we note that the record contains evidence of a criminal record. The applicant was convicted on May 20, 1996 for one count of violating section 653F(d) of the California Penal Code – soliciting the commission of certain crimes. This offense is listed as a misdemeanor with [REDACTED]. The applicant was sentenced to 24 months probation. The minute order for this offense reveals that the charge was subject to a “diversion” hearing, wherein the applicant was sentenced to probation. Subsequent to the successful completion of court ordered conditions of probation, the diversion was terminated, and the charge was dismissed on November 20, 1996.

Next, the applicant was convicted on May 28, 1996 for one count of violating section 242 of the California Penal Code – battery. This offense is listed as a misdemeanor violation with [REDACTED]. The applicant was sentenced to three days in jail and ordered to serve 24 months probation. Thereafter, the applicant violated the terms of probation and his sentence was modified to include a 30 day period of incarceration.

The applicant was also convicted on May 13, 1997 for one count of violating section 11350(a) of the California Health and Safety Code – possession of a narcotic controlled substance. This offense is charged as a felony with [REDACTED]. The applicant was sentenced to 26 days in jail and 36 months probation.

As noted above, the term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. See section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The applicant's single felony conviction is sufficient to render him ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

For these additional reasons, the applicant is not eligible for temporary resident status. The decision of the director is affirmed.

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

