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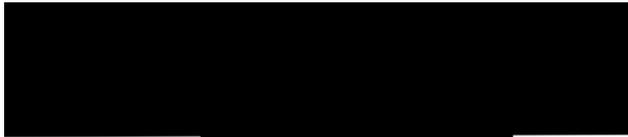


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 06 091 13156

Office: LOS ANGELES

Date: NOV 04 2009

IN RE:

Applicant:



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 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), finding the applicant had failed to 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. Specifically, the director noted conflicts in the evidence submitted by the applicant and that such conflicts remained unresolved. The director concluded that the applicant had not met his burden of proof to establish eligibility for temporary resident status.

The applicant is represented on appeal but has submitted a personal statement in support of the Notice of Appeal (Form I-694). The applicant states that he has provided sufficient evidence to meet his burden of proof to qualify for temporary resident status according to the terms of the settlement agreements. No new evidence is submitted 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)(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. We note that the evidence of record includes two convictions for DUI offenses in California: a conviction on January 7, 1988 [REDACTED], and a conviction on December 18, 1996 [REDACTED]. In general, two misdemeanor convictions would not disqualify an applicant for temporary resident status, unless one of the convictions is classified as a crime involving mortal turpitude (CIMT) not subject to the petty offense exception. *See* INA § 212(a)(2)(A)(i)(I) and (ii)(I); 8 U.S.C. § 1182(a)(2)(A)(i)(I) and (ii)(I). As the criminal record in this case consists of two misdemeanor convictions, neither of which is considered to be a CIMT, the applicant is not ineligible for temporary resident status on criminal grounds. 8 C.F.R. § 245a.2(c)(1).

The director denied the Form I-687 because the applicant failed to establish entry and continuous residence for the requisite period. The AAO has reviewed the evidence of entry and continuous residence submitted by the applicant. The evidence includes wage and earnings statements from 1985 to 1989, a federal income tax return for 2003, and an affidavit from [REDACTED]

None of the documentary evidence establishes entry on or before January 1, 1982 and continuous residence and presence up to May 4, 1988. The federal tax return for 2003 is not relevant because it is outside of the qualifying time period. The earnings and wage statements indicate that the applicant was in the United States for some of the requisite period, but do not establish entry and residence for the entire period.

The affidavit submitted by the applicant does not verify his entry and continuous residence for the requisite period. It contains statements that the affiant has known the applicant since 1981 and attests to the applicant being physically present in the United States during the required period. The affidavit fails, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The statement from the applicant's witness, [REDACTED] does not 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 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. Upon review, the AAO finds that [REDACTED] statement does not indicate that the assertions are probably true. Therefore, it has little probative value and the application for temporary residence must be denied on this ground. *See* 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Furthermore, the [REDACTED] states in her affidavit that the applicant lived in her home with his uncle from 1981 to 1987 and that the home was located at [REDACTED]. However, the applicant lists this address as his residence in 1985, and his residence from 1980 to 1985 as [REDACTED]. The conflict between the information contained in the Form I-687 and the affiant's statement in support of the application is not explained in the record or resolved on appeal.

As discussed above, 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 applicant has not provided independently verifiable, probative evidence aside from his own assertions that he entered the United States on or before January 1, 1982 and remained here for the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act because he cannot meet his burden of proof and his assertions on appeal do not corroborate his claim nor resolve the conflict between the statement of his witness and the information contained in the Form I-687.

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