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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: NOV 27 2009
MSC 06 082 12338

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Newark, New Jersey, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 determined 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, counsel asserts that the applicant has submitted sufficient documentation establishing continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file his application. Counsel requests oral argument.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The record contains a copy of the applicant's Polish passport, which reflects that on January 29, 1981, the applicant was issued a B-2 nonimmigrant visa valid until July 29, 1981. The Form I-94, Arrival-Departure Record, reflects that the applicant lawfully entered the United States on March 1, 1981. The applicant was admitted until April 4, 1981.

The record contains a Form I-589, Application for Asylum and Withholding of Removal, signed by the applicant on December 29, 1981.[1] The applicant indicated on his Form G-325A, Biographic Information, to have resided at [redacted] since March 1981. On November 18, 1982, the Form I-589 was automatically terminated pursuant to O.I. 103.2(o).

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[1] The applicant was assigned alien registration number [redacted]. The documents have been consolidated into [redacted]

On December 17, 1982, the applicant filed another Form I-589.[2] The applicant was granted employment authorization until May 2, 1983. On his Form G-325A, the applicant listed his residence from January 1982 at . On August 2, 1983, the Form I-589 was denied. On February 14, 1984, a Form G-56, General Call-in Letter, was issued, which requested the applicant to appear on March 8, 1984 in regards to his asylum application. On March 8, 1984, the applicant was interviewed and indicated that he never received any correspondence regarding the denial of his asylum application. On May 3, 1984, another Form G-56 was issued, which requested the applicant to appear on June 26, 1984 at the Newark, New Jersey Office. The applicant appeared on June 26, 1984 and was interviewed. On July 11, 1984, another Form G-56 was issued, which requested the applicant to appear on July 31, 1984 at the Newark, New Jersey Office for an interview regarding his immigration status. According to the Service officer's notes on the Form I-213, Record of Deportable Alien, dated July 31, 1984, the applicant had been gainfully employed since May 1983 in construction with The applicant indicated that he filed taxes in 1983, but not for 1981 or 1982. On August 21, 1984, a Form I-221, Order to Show Cause was issued. A notice of hearing in deportation proceedings was scheduled on August 27, 1985; however, the applicant failed to appear. On March 13, 1986, the immigration judge ordered the case to be administratively closed.

On November 4, 1983, the applicant filed another Form I-589.[3] On his Form G-325A, the applicant listed his residences in Trenton, New Jersey from March 1981 to December 1981 at and from December 1981 at

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, to the date the applicant attempted to file his application, the applicant submitted:

- A social security statement dated February 13, 2006, which reflects the applicant's earnings in 1983, and 1985 through 1988.
- A letter dated December 12, 2007, from in Lawrenceville, New Jersey, who indicated that the applicant was employed from 1986 to 1989.
- A New Jersey driver's license issued on June 1, 1982, and listing the applicant's address at
- An affidavit from who indicated that he resided and worked with the applicant from 1981 to 1989 in Trenton, New Jersey.

In this instance, the applicant submitted evidence, including contemporaneous documents, which tends to corroborate his claim of residence in the United States during the requisite period. As

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[2] The applicant was assigned alien registration number . The documents have been consolidated into .

[3] The applicant was assigned alien registration number . The documents have been consolidated into

stated in *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the asserted claim is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished with his Form I-687 application along with the documents and information relating to his asylum applications may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Based upon the foregoing, the applicant has established 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, eligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is sustained.