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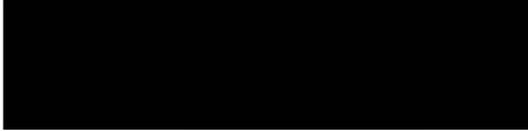
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-027-27484

Office: CHICAGO

Date: **OCT 08 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 remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Perry Rhew".

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, Chicago, and 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 after determining 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 noted the discrepancy in the applicant's employment history. 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, the applicant asserts that the employment discrepancy noted by the director has been rectified by a statement submitted by his former employer.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

As noted above, the applicant must establish that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, or until he filed or attempted to file the Form I-687 application. 8 C.F.R. § 245a.2(b)(1). Any absence from the United States during this time period must be brief, casual and innocent.

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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence and continuous physical presence in the United States throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of IRS Form 1040, U.S. Individual Income Tax Returns, for the tax years 1982 through 1988, with IRS receipt dates of June 9, 2003. He also submitted as evidence copies of correspondence, dated October and November 2003, from the IRS in reference to the applicant's Form 1040s.

The applicant submitted the following evidence:

- A photocopy of the applicant's California Driver License dated August 30, 1985.

- Copies of IRS Form 1040, U.S. Individual Income Tax Returns, for the tax years 1982 through 1988, with IRS receipt dates of June 9, 2003.
- Copies of correspondence from the IRS to the applicant dated October and November 2003 in reference to the applicant's Form 1040s he submitted.
- A letter from [REDACTED] of St. Josaphat Church who stated that the applicant has been a member of the church since 1986. Here, the letter is inconsistent with the applicant's Form I-687 application at part #31 where he does not list any association or affiliation with any church or religious organization. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not specify the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).
- A letter from [REDACTED] who stated that he has known the applicant since 1981 and that the applicant rented an apartment at [REDACTED] in Chicago, Illinois where the declarant worked as a desk clerk.
- An affidavit from [REDACTED] who stated that the applicant lived with him at [REDACTED] in Chicago, Illinois from May 1981 to July 1984.
- A letter from [REDACTED] who stated that the applicant was employed at his restaurant from July 1981 through June 1984.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1984 and that they met at Our Lady of the Rosary and visited with the applicant at [REDACTED] in Union City from 1984 to 1986.
- An affidavit from [REDACTED] who stated that he lived with the applicant and two other friends at [REDACTED] from 1986 to 1989.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1987 and that they met at church.

The affidavits and declarations fail 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.

None of the affiants' and declarants' statements 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 and declarations. To be considered probative and credible, witness affidavits and declarations 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, individually and collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States during the requisite period.

On appeal, the applicant reasserts his claim of eligibility for the immigration benefits sought. The applicant submitted a declaration from [REDACTED] who states that he employed the applicant at his restaurant in Franklin Park, Illinois from July 1981 to June 1984. The letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant fails to indicate the availability of the employment records for inspection. 8 C.F.R. § 245a.2(d)(3)(i).

Although the applicant has submitted some evidence of his presence in the United States during the requisite period, he has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detracts from the credibility of this 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 applicant's reliance on documentation that is of little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite periods 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.