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FILE: [REDACTED]
MSC-04-314-11028

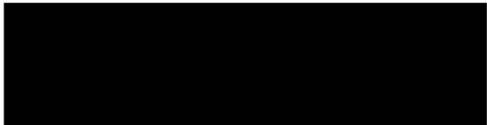
Office: LOS ANGELES

Date: **OCT 27 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:



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.



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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States in an unlawful status through the date he filed or attempted to file the application during the original legalization period.

On appeal, counsel for the applicant contends that the applicant has provided sufficient credible evidence to show that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

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).

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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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided in the United States continuously from before January 1, 1982 to the date of filing the application pursuant to the CSS Settlement Agreements.

The applicant asserted at his interview on July 29, 2005 that he had continuously resided in the United States since before January 1, 1982. To prove this assertion, the applicant submitted various documents including photocopies of his federal tax returns for the years 1982 to 1988; a photocopy of his social security earnings record, showing earnings for the years 1982 and 1983; photocopies of his W-2s from Pressed Metal Products for the years 1982 and 1983; a photocopy of his Texas temporary permit dated August 7, 1980; and photocopies of his Tae Kwon Do's certificates issued in 1982 and 1983.

Upon review, the AAO finds that the Texas temporary permit, the W-2s from Pressed Metal Products, the social security record, and the applicant's Tae Kwon Do's certificates are credible and probative as evidence of the applicant's residence in the United States from 1980 to 1983. Nevertheless, these documents, when combined with other evidence in the record, do not show that the applicant resided and was physically present in the United States during and throughout the requisite periods.

In adjudicating the application, the director found that the applicant filed his 1982 – 1988 federal tax returns in 2005 and determined that these documents were not probative as evidence of the applicant's residence in the United States during the requisite period. On appeal, counsel states that he advised the applicant to file back taxes for the years 1982 to 1988. The AAO agrees with the director that since these tax returns were not filed during the requisite period, they do not establish the applicant's residence in the United States during that period.

The applicant also submitted numerous affidavits, letters, and witness statements from 17 individuals to prove that he has continuously resided in the United States throughout the requisite period. The letter from Wynn's Climate Systems, Inc. states that the applicant started to work for Lone Star Manufacturing Company in 1979 and ended his employment in 1984. This evidence, however, is not credible. When contacted by United States Citizenship and Immigration Services (USCIS), the company could only confirm that the applicant worked from 1982 to 1983.

claims in his affidavit that he hired the applicant to work as a landscaper in Sacramento, California, from July 1984 to December 1988. The director stated that the telephone number on the affidavit had no longer been in service and further noted that this affidavit was not amenable to verification. On appeal, counsel indicates that there is a listing for in Sacramento, California, but the information is protected and may not be provided. The AAO agrees with the director that this evidence is not amenable to verification and thus, not probative as evidence of the applicant's residence in the United States during the requisite period. The AAO additionally notes that fails to follow the specific guidelines as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i) concerning past employment records. Specifically, fails to include the address or addresses of the applicant at the time of his employment, the exact period of his employment, his duties with the companies, whether or not the information was taken from official company records, where such records are located, and whether USCIS may have access to the records.

The letter from Stockton Bin & Pallet Repair, Inc. and the affidavits from and do not relate to the requisite period and thus, will not be considered.

states in his June 1991 affidavit that the applicant resided at from May 1979 to July 1984. His June 1991 statement, however, is not consistent with his subsequent statement made in September 1992, where he claims that the applicant resided with him at from April 1979 to August

1984. A review of the record additionally reveals that neither affidavit is consistent with the applicant's current Form I-687. The affidavits are not credible and not probative as evidence of the applicant's residence in the United States during the requisite period.

Both [REDACTED] and [REDACTED] indicate in their affidavits that the applicant left the United States in July 1987. Neither [REDACTED] nor [REDACTED] states when the applicant returned to the United States. Neither provides any information as to where the applicant lived or worked in the United States during the requisite period. A review of the record further reveals that the applicant has never claimed to have left the United States in July 1987. The director noted during the interview with the applicant on July 29, 2005 that the applicant left the United States in September 1987 to marry his current wife. At part #35 of his previously filed Form I-687, the applicant claimed to have left the United States in June 1987 to visit his family in Mexico and from August 1987 to September 1987 due to the death of his mother in Mexico. Because of the noted inconsistencies and for the lack of relevant detail, the affidavits will not be given any weight.

[REDACTED], and [REDACTED] claim in their statements that they have been acquainted with the applicant since 1979, 1980, or 1981. [REDACTED] declares that the applicant lived in his house at [REDACTED], from 1979 to 1982. Both [REDACTED] and [REDACTED] state that the applicant lived with [REDACTED] at [REDACTED], from 1982 to 1984. [REDACTED] affirms that the applicant lived in her house from 1982 to 1984. [REDACTED] claims in his affidavit that the applicant lived at [REDACTED] Sacramento, California, from July 26, 1984 to December 15, 1988. [REDACTED] asserts in his affidavit that the applicant lived at [REDACTED] in 1986.

The applicant, however, stated at part #33 of his previously filed Form I-687 that he lived at [REDACTED] from 1979 to 1984 and at [REDACTED] Sacramento, California, from July 1984 to December 1988. Besides the noted inconsistencies, the affiants and the witnesses mentioned above fail to describe with sufficient detail what the applicant did with his time, his activities, friendships, and interaction with the community or provide other particulars of his residence in the United States during the requisite period. To be considered probative and credible, witness statements or 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. Simply stating that the applicant has lived in the United States during a certain period without providing any detail about the events and circumstances of the applicant's life in the United States during that period does not establish the reliability of the assertions and does not establish the applicant's continuous residence in the United States throughout the requisite period. The statements and the affidavits will be given nominal weight.

Taken individually and collectively, the evidence submitted establishes that it is more likely than not that the applicant resided in the United States for some part of the requisite period, namely from 1980 to 1983; however, it does not prove that the applicant continuously resided and was physically present in the United States during and throughout the requisite periods.

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

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