U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: OCT 30 2009
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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.

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, or *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 initially approved. Subsequently, the Director, Chicago, terminated the applicant's temporary resident status.[1] The decision to terminate is now before the Administrative Appeals Office (AAO) 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 to U.S. Citizenship and Immigration Services (CIS). 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 terminated the applicant's temporary resident status, 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 he has provided sufficient evidence to establish continuous, unlawful residence in the United States for 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)(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).

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[1] Although the decision stated that the application was denied, the director meant to state that the applicant's temporary resident status was terminated.

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, *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 petitioner 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

On March 14, 1988, the applicant filed his Form I-687 application. On May 24, 1988, the applicant's Form I-687 application was approved. On August 16, 2006, the director terminated the applicant's temporary resident status. The record includes the following documents in support of his claim of residence in the United States during the requisite period:

- a copy of the applicant's daughter's birth certificate stating that she was born in Illinois on June 8, 1980;
- a copy of a certificate of title of a vehicle dated September 17, 1980;
- a copy of the applicant's son's birth certificate stating that he was born in Illinois on January 26, 1987;
- a Chicago Public School District 299 verification of enrollment for [redacted] stating that she was continuously enrolled from September 7, 1983 to the date of signature, October 28, 1987, and listing the applicant as her guardian;

- a letter on 4 Towers letterhead signed by and dated September 21, 1987 stating that the applicant was employed by his company from September 1981 to September 23, 1985;
- a copy of the applicant's son's certificate of baptism dated February 9, 1985;
- a copy of the applicant's adult/continuing education identification valid through December 18, 1985;
- a copy of the applicant Illinois driver's license issued on April 8, 1986;
- a letter from the Illinois Department of Public Aid dated November 30, 1986;
- a notarized statement regarding the applicant's claim for wages signed by the applicant on December 8, 1986;
- a notarized letter on letterhead signed by and dated December 12, 1987 stating that the applicant was employed by his company during the early summer of 1987;
- a copy of a receipt dated January 8, 1988 listing the applicant's name and address;
- a copy of the applicant's Form W-2 and tax return for 1988;
- a copy of a letter from the U.S. Department of Housing and Urban Development dated January 25, 1988;
- a contract signed by the applicant on March 4, 1988; and
- affidavits signed by and

On August 16, 2006, the director terminated the applicant's temporary resident status stating that the applicant failed to meet his burden of proof. On appeal, the applicant asserts that that he has provided sufficient evidence to establish continuous, unlawful residence in the United States for the requisite period. The AAO disagrees with the director's decision.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The AAO notes that the record of proceeding contains no evidence that the director notified the applicant of her intent to terminate the applicant's temporary resident status by mailing a notice of intent to terminate by certified mail, as required by 8 C.F.R. § 245a.4(b)(20)(ii).

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.