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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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Services

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[REDACTED]

FILE: [REDACTED] Office: DALLAS
[REDACTED] - consolidated herein]
MSC 06 100 10259

Date: **OCT 30 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, Dallas, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on January 8, 2006. The record also contains Forms I-687 signed by the applicant in August 1990 and May 1995.

The director denied the current application on October 30, 2007, because 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 applicant, through counsel, filed an appeal from the director's decision on November 29, 2007. On appeal, counsel for the applicant submits a brief and additional documentation.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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).

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).

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 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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided during the member ship period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that he resided in the United States in an unlawful status throughout the requisite time period.

The record contains the following documentation in support of the applicant's claims:

Employment letters:

1. Letters notarized on August 8, 1990, submitted in connection with the applicant's Form I-687 signed in 1990, from [REDACTED] and [REDACTED] states the applicant had worked and lived on the farm since December 1979, while Ms. [REDACTED] states the applicant had worked and lived on the farm since May 1979. [REDACTED] also submitted a letter on behalf of the applicant in 2003 stating the applicant had worked for him "from time to time since December 1979."

The employment letters provided do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to show periods of layoff, declare whether the information was taken from company records, 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.

Organization letter:

2. A letter dated February 25, 2005, from [REDACTED] in Waxahachie, Texas, stating the applicant had been a member of the parish since May 12, 1974.

The above attestation does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v), in that it does not show the applicant's inclusive dates of membership and the address(es) where the applicant resided throughout the membership period. Furthermore, it does not establish the origin of the information being attested to (i.e., whether the information being attested to is anecdotal or comes from church membership records). Furthermore, at the time of signing his Forms I-687 in 1990, 1995 and 2007, the applicant responded "none" to questions requesting him to list his involvement in affiliations, associations, clubs, organizations, churches, unions businesses, etc.

Affidavits from relatives and acquaintances:

3. Undated letters, submitted in connection with the applicant's Form I-687 signed in 1990, from [REDACTED] and [REDACTED] (no addresses or identifying documentation provided) stating they had known the applicant since 1976.
4. A letter dated May 25, 2003, from [REDACTED] the applicant's niece, stating she had known the applicant since 1977.
5. Letters notarized on March 22, 2005, from [REDACTED] and [REDACTED] states, in part, she had known the applicant for 24 years – that he lived with her sister [REDACTED] and her husband [REDACTED] – and had been present for the baptisms of her children in 1982 and 1987. [REDACTED] the applicant's niece, states the applicant worked and lived with her family at [REDACTED] in [REDACTED]

Waxahachie from September 1978 until they moved to [REDACTED] in Waxahachie on January 11, 1991, and that the applicant was in Texas when her children were born in 1980, 1985, and 1988.

6. A letter dated December 10, 2005, from [REDACTED] stating he had known the applicant worked for [REDACTED] in 1978's. In a letter notarized on September 29, 2007, [REDACTED] brother, [REDACTED] states he had known the applicant since 1980.
7. A letter dated September 26, 2007, submitted on appeal, from [REDACTED] [REDACTED] of Waxahachie Warehouse Company Inc. stating the applicant "...first came to Texas and worked for another entity of the family business in 1974..."
8. A letter dated October 1, 2007, from [REDACTED] stating she had known the applicant since she was born in 1977 – that the applicant was her uncle on her father's side and that the applicant "always lived in Waxahachie."
9. A letter from [REDACTED] of WTR in Lancaster, Texas, stating that he had known the applicant since the early 1980's when he worked for [REDACTED]
10. A letter from [REDACTED] stating he had known the applicant since the 1980's.

Other Documentation:

11. Photocopies of photographs in which the individuals are not identifiable, do not indicate the names of the individuals photographed, and do not indicate when and where the photographs were taken.
12. A Social Security Statement showing that the applicant had limited earnings from 1974 through 1978 and in 1980. The statement shows \$3 in earnings in 1982 and no other earnings until 2002.

The record contains sufficient documentation to establish the applicant's physical presence in the United States during parts of 1974 through 1978, 1980 and 1983. However, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries; children's birth certificates; bank book transactions; letters of correspondence; automobile, contract, and insurance documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi). The documentation provided by the applicant to establish his continuous residence throughout the requisite time period consists primarily of third-party affidavits from relatives and acquaintances ("other relevant documentation"). For the most part, the documents lack specific details as to how the affiants knew the applicant, how often and under what circumstances they had contact with the applicant

and are not supported by any corroborative documentation to establish that the affiants actually resided in the United States during the time periods being attested to.

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. It is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the date he filed a Form I-687 application 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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