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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

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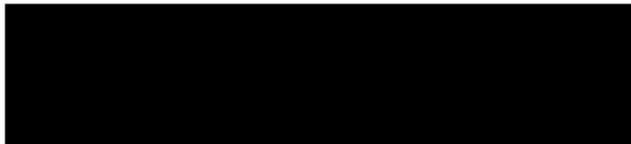
IN RE:

Applicant:



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. 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.

John F. Grissom  
Acting 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, Houston, Texas, 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 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 proof to meet the requirements of a temporary resident. Counsel asserts, “the applicant genuinely believed that he was only supposed to put his residences in the United States from 1981 on.” Counsel asserts that the applicant, in a sworn affidavit, clarifies the misunderstanding he had at his previous interview, and the misunderstanding should not have any impact of the applicant’s application.

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 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.

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

- An affidavit from [REDACTED], who indicated that he has known the applicant since 1985 and attested to the applicant’s moral character.
- An employment letter dated January 11, 2005, from [REDACTED] of Alexander Valley Nursery in Geyserville, California, who indicated that the applicant was employed from 1981 to 1989.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1974 and attested to the applicant’s moral character.
- An affidavit from [REDACTED] who attested to the applicant’s residence in the United States since 1978. The affiant indicated that in 1978 the applicant was residing in California. The affiant also attested to the applicant’s moral character.

The applicant also submitted an affidavit from [REDACTED] written in the Spanish language. The affidavit, however, cannot be considered as it was not accompanied by the required English translation. Any document containing foreign language submitted to USCIS shall be

accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

On his Form I-687 application, the applicant listed his absences from the United States during the requisite period as June 1983 to July 1983; November 1984 to December 1984; and October 1986 to November 1986.

At the time of his interview on October 17, 2006, the applicant indicated that he was married in Mexico in June 1983 and had four children who were born in Mexico on March 22, 1984, August 20, 1985, July 20, 1987, and September 5, 1992.

On October 17, 2006, the director issued a Form I-72, which requested the applicant to submit copies of his and his children's birth certificates along with English translations. The applicant was also requested to submit original documents establishing his physical presence in the United States from 1981 to 1988. The applicant, in response, submitted the requested birth certificates, which reflect that his children were born in Mexico on March 22, 1984, August 20, 1985, and July 20, 1987. The applicant also submitted copies of affidavits that were previously provided.

In an attempt to verify the applicant's employment, the interviewing officer telephoned and spoke with a representative of Alexander Valley Nursery. In response, the Service received a facsimile from [REDACTED], who listed the applicant's employment as follows:

June 1976 to February 1981 full time  
1982 worked 4<sup>th</sup> quarter  
1983 worked 1<sup>st</sup> quarter  
1990 worked all year.

On January 5, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the birth certificates reflect that he appeared in person to register his daughters' births on April 10, 1984 and December 8, 1987; however, he did not claim absences during these periods on his Form I-687 application. The applicant was advised that the employment dates from [REDACTED] contradicted his claim to have entered the United States in 1981. The applicant was also advised that attempts to contact the affiants were unsuccessful.

The applicant, in response, asserted that except for one affiant, the remaining affiants' telephone numbers have not been changed. The applicant, asserted, in pertinent part:

During my interview I was asked by officials what had ensure since January 1, 1981. I understood this question to imply my status in the United States as of January 1, 1981, and not whether I had entered the United States prior to January 1, 1981.

It was because of my inability to understand and personal family problems that I forgot certain dates and responded to these confusing questions with uncertainty.

I now want to state that I first entered the United States in 1976 through California without inspection.

I now want to state that I did in fact depart to Mexico on April 1984 and December 1987 in regards to an emergency because they needed my signature in order to register my daughters.

The director, in denying the application on August 13, 2007, determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, to the date he attempted to file his application. The director also determined that the applicant's argument regarding the date of his first entry into the United States has no merit as the officer who conducted the interview is fluent in the Spanish language.

Whether or not the applicant entered the United States in 1976 or 1981 is irrelevant as said arrival occurred prior to January 1, 1982 for establishing eligibility. 8 C.F.R. § 245a.2(b)(1). However, the AAO agrees with the director's findings as the documents discussed above are not substantive enough to support a finding that the applicant *continuously* resided in the United States during the requisite period.

The employment letter from [REDACTED] only establishes the applicant's presence in the United States in February 1981, during the fourth quarter of 1982 (October to December) and the first quarter of 1983 (January to March). The employment letter from [REDACTED] does not correspond with the employment dates provided by [REDACTED] and, therefore, it appears that the applicant utilized [REDACTED]'s letter in a fraudulent manner in an attempt to support his claim of continuous residence in the United States during the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established

and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.