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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  
and Immigration  
Services

[REDACTED]

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FILE:

[REDACTED]  
MSC 07 121 12135

Office: MIAMI

Date:

SEP 10 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.

John F. Grisson, 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, 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 denied by the Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his eligibility for Temporary Resident Status. Counsel submits some of the same evidence previously provided on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. See 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. See 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. See 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. See 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).

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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 applicant is a native of Ecuador who claims to have resided in the United States since August 20, 1980, and he filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 11, 2006.

In the Notice of Intent to Deny (NOID), dated June 20, 2007, the director stated that the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence, and continuous physical presence, in the United States during the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated July 25, 2007, the director denied the instant application based on the reasons stated in the NOID. The director noted that the applicant responded to the NOID but failed to overcome the reasons for denial stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The evidence provided by the applicant consists of the following:

### Employment Letters

- 1) The applicant submitted a letter of employment, and an affidavit, from [REDACTED] Assistant Manager of Passaic Window Cleaning & Building Maintenance, Inc., stating that one [REDACTED] had been employed as a window cleaner during 1981 to 1986. It is noted that [REDACTED] does not specify dates when the employment commenced or ended.
- 2) The applicant also submitted a letter of employment, dated August 3, 1988, from [REDACTED] of K.E.B Warehousing and Packing Co., Inc., stating that since January 1, 1987, the applicant had been employed as a warehouse packer.

It is noted that the letters failed to provide the applicant's address at the time of employment. Also, the letters failed to show periods of layoff, 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

### Affidavits

- 1) An affidavit from [REDACTED] attesting that he has been the applicant's landlord since December 1987. Mr. [REDACTED], however, does not provide any additional details to indicate whether the applicant has been a continuous resident prior to December 1987. Also, the affiant does not indicate the location of the rental property.
- 2) An affidavit from [REDACTED], attesting that he had been the applicant's landlord from 1985 to 1987. [REDACTED], however, does not provide any additional details, such as when in 1985 the tenancy commenced or ended in 1987; whether the applicant has been a continuous resident prior to 1985; and, the location of the rental property.
- 3) An affidavit from [REDACTED] attesting that she had been the applicant's landlord from 1980 to 1984. [REDACTED], however, does not provide any additional details, such as when in 1984 the tenancy ended.

In addition, the applicant submitted photocopies of mail envelopes addressed to him at a New Jersey address, date-stamped July 7, 1981, and in 1985. The envelopes are not originals, and are not probative of the applicant's continuous residence. The applicant also provided photocopies of earning statements, dated April 30, 1984, and May 18, 1984, respectively, in his name; and, a summary of FICA earnings for years 1983, 1984, 1985 and 1986, in the name of "[REDACTED]". However, these statements are not probative as to the applicant's continuous residence. It is noted that the applicant does not provide an explanation as to why he had been employed as "[REDACTED]" from 1983 to 1986 when he had also been employed in April and May 1984 under his name, "[REDACTED]". It is also noted that the applicant does not indicate on his Form I-687 that he had ever been employed by the "concrete" company identified on his April 30, 1984, and May 18, 1984 earnings statements.

The record of proceedings also contains a letter from [REDACTED] of Saint Mary of Walsingham Church, located at 21 Ridge Street, Orange, NJ 07050, stating that the applicant had been registered since August 1985, and that he attends mass weekly. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter from the Saint Mary of Walsingham Church does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ... (membership) ... period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that attendance (membership) records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

Contrary to counsel's assertion, the applicant has failed to submit sufficient evidence to establish his continuous residence. As discussed above, the evidence provided, including letters and affidavits, lack essential details. As such, the evidence provided is insufficient to establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

It is noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with his application, reflects that:

1. The applicant was arrested on December 2, 1992, by the Miami Police Department, Miami, Florida, and charged with "COCAINE-POSSESS." The FBI results report indicates disposition as "DROPPED/ABANDONED" on December 23, 1992; and,
2. The applicant was arrested on February 23, 1997, by the Miami Police Department, Miami, Florida, and charged with: Charge 1 – TRESSPASSING – POSTED CONSTRUCTION SITE; and, Charge 2: "LARCENY." The FBI results report indicates disposition as "DROPPED/ABANDONED" on March 17, 1997.

It is noted that the final court dispositions are not in the record of proceeding. CIS must address these arrests in any future proceedings.

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