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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



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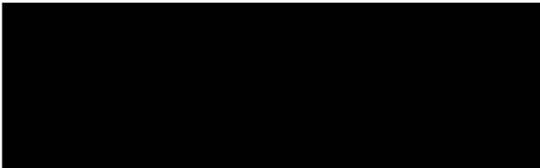
FILE: [REDACTED] Office: BOISE
MSC 05 249 16786

Date: **FEB 04 2010**

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. The file has been returned to the office that processed your case. If your appeal was sustained, or if your case 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, Boise, Idaho. The applicant appealed the decision to the Administrative Appeals Office (AAO) and the appeal was rejected. This case will be reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act). The previous rejection of the appeal shall be withdrawn.¹ The appeal is again before the AAO and will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel submits three new affidavits in support of the applicant's claim of residence.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

¹ The AAO rejected the appeal based upon the determination that the director denied the application for a lack of prosecution because the applicant had abandoned his application by failing to respond to a request for additional supporting documentation within the requisite time. However, the record contains two separate denials, the first dated February 24, 2006 in which the director denied the application for a lack of prosecution, and second dated March 2, 2006 in which the director denied the application because the applicant failed to submit sufficient evidence demonstrating his continuous unlawful residence in the United States from prior to January 1, 1982. The AAO accepts the evidence that the decision dated March 2, 2006 is the correct and proper decision in the current proceedings.

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. *See* 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. 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 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 "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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on June 6, 2005.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted eighteen photocopied envelopes addressed to or from the applicant's father [REDACTED]. However, the probative value of these envelopes is negligible as the envelopes do not contain any reference to the applicant himself.

The applicant provided four original envelopes and four photocopied envelopes that were represented as having been mailed from Mexico to him at an address in Jerome, Idaho. Nevertheless, the probative value of these original and photocopied envelopes is minimal as the postmarks are not discernible and it cannot be determined the date each of the respective envelopes was mailed.

The applicant included a photocopy of the back of envelope containing only a postmark dated April 15, 1988. As the back of envelope does not contain any information relating to the applicant and there is no way to determine if the back of the envelope corresponds to any of the other envelopes in the record, it cannot be concluded that this document is probative to the applicant's claim of residence in the United States for period in question.

The applicant submitted included five photocopied letters dated July 28, 1981, March 18, 1982, December 20, 1982, April 2, 1983, and September 6, 1984, respectively, addressed to the applicant from his mother. Regardless, the probative value of these letters is limited in that the letters contain no information to determine whether the applicant was residing in the United States on the dates the letters were represented as having been written.

The applicant submitted an employment letter containing the letterhead of [REDACTED] in Brawley, California that is signed by [REDACTED] who listed his position as president. [REDACTED] stated that this enterprise employed the applicant to move sprinkler pipes while irrigating lettuce fields from 1981 to 1987. [REDACTED] noted that the applicant was paid between \$4.25 to \$4.50 per hour in cash and that proper employment records did not exist. However, [REDACTED] failed to list the applicant's address at the time of his employment with [REDACTED] as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, the letter attests to the applicant working seasonally, and not continuously. It is also noted that the applicant did not list employment with [REDACTED] on the Form I-687 application. Thus, the letter has minimal probative value.

The applicant provided an employment affidavit signed by [REDACTED] who declared that he employed the applicant on a temporary basis to move irrigation pipes and pick rock from May

1, 1986 to August 31, 1989. Nevertheless, [REDACTED] did not list the applicant's address at the time of his employment and did not provide relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, it is noted that the applicant did not list this employment on the Form I-687 application. Consequently, the letter has minimal probative value.

The applicant included an affidavit that is signed by [REDACTED]. Ms. [REDACTED] noted that the applicant rented a house at "[REDACTED]" in Jerome, Idaho from her from August 1987 to June 1988. However, [REDACTED] testimony must be considered as general and vague lacking sufficient details and verifiable information to corroborate the applicant's residence. Further, this information conflicts with testimony in the Form I-687 application, which lists this address as a residence after the requisite period from July 1995 to April 1998.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on March 25, 2006.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony or relevant information to substantiate the applicant's claim of residence in the United States for the period in question.

The record shows that the AAO issued a notice dated October 9, 2009 to both the applicant and counsel informing the parties that the matter had been reopened after the appeal had initially been rejected and that they had thirty days to submit additional material to supplement the applicant's appeal. As of the date of this decision neither the applicant nor counsel has submitted a statement, brief, or evidence to supplement the appeal. Consequently, the record must be considered complete.

The absence of sufficiently detailed and verifiable supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 as required under section 245A the Act. 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.