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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**

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[REDACTED]

FILE: [REDACTED] Office: HOUSTON  
MSC 05 267 10360

Date: FEB 12 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:

[REDACTED]

**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, 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. The decision 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that the applicant failed to respond to a Notice Of Intent To Deny (NOID) and denied the application for the reasons set forth in the NOID.

On appeal, counsel submits a brief stating that the record, taken as a whole, establishes the applicant's eligibility for the immigration benefit sought.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all

evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 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, 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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant's claim:

- The applicant submitted 13 witness statements in support of his application. The statements are general in nature with the witnesses stating that they know the applicant and that the applicant has resided in the United States for all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements 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 witness does, by virtue of

that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

The applicant submitted a merchandise receipt from [REDACTED] in Channelview, Texas dated September 1, 1982. The receipt is not deemed probative because it does not identify the applicant as the individual making the purchase.

- The applicant submitted a merchandise receipt from [REDACTED] dated October 4, 1982. The receipt is not deemed probative because it does not identify the applicant as the individual making the purchase.
- The applicant submitted an employment statement from [REDACTED], which states that the applicant was employed by that organization as a contractor/mechanic from December of 1981 through December of 1984, earning an average of \$250.00 per week. [REDACTED] states that there were no periods of layoff, that no official employment records were maintained, and that the applicant's address at the time of employment is unavailable.

The applicant submitted an employment statement from [REDACTED] which states that the applicant was employed by that organization as a contractor/maintenance person on a part-time basis from January of 1982 through April of 1984. The applicant's average monthly wage was \$500.00 per month. [REDACTED] states that no official employment records were maintained.

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 employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statement from [REDACTED] does not state the applicant's address at the time of employment, or identify the basis for the information provided since no employment records were maintained. The statement from [REDACTED] does not provide the applicant's address at the time of employment; show periods of layoff, or state the basis of the information provided since employment records were not maintained. As such, the employment statements are not deemed probative and are of little evidentiary value.

On September 20, 1990, the applicant signed a statement indicating that he did not file a legalization application before May 4, 1988 because he heard on the radio and in the news that he could not apply for legalization because he had left the United States without first obtaining advance parole. On June 13, 2005, the applicant signed a CSS/Newman (LULAC) Class Membership Worksheet stating that he visited an office of the former Immigration and Naturalization Service (INS) to apply

for legalization, but was turned away because the INS or the Qualified Designated Entity (QDE) believed that he had traveled outside the United States after November 6, 1986, without advance parole, or that he had traveled outside the United States and returned after January 1, 1982, with a visitor's visa, student visa or some other type of visa or travel document. These inconsistencies are not explained in the record. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- The applicant submitted a statement from [redacted] stating that he performed a psychiatric evaluation on the applicant and that the applicant suffers from a Major Depression Disorder, and that the applicant has a memory deficiency which will probably not improve in the future.

It is noted that the applicant was examined by [redacted] on February 3, 1997 and the doctor found no evidence of mental defect in the applicant at that time.

The only other evidence submitted by the applicant in support of his application is his personal statement. The applicant's statement, however, in the absence of other credible and relevant evidence establishing that he resided in the United States throughout the requisite period, will not sustain his claim. As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistency noted above, 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, and the noted inconsistency, 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.

Beyond the decision of the director, the record contains court documents and computer printouts that reflect the applicant pleaded guilty to a charge of *assault-family member*, a misdemeanor, in violation of the Texas Penal Code on May 4, 2001 in the Texas District Court for Harris County with

These documents show that the case was deferred and the applicant was sentenced to 60 days confinement.

The applicant has been convicted under the statutory definition of this term provided at section 101(a)(48)(A)(i) of the Act. The record contains a copy of the Judgment and Probation Order reflecting that the applicant entered a plea of guilty to the charge cited in the previous paragraph on May 4, 2001. Clearly, he meets the two prong test outlined in Section 101(a)(48)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1101(a)(48)(A). First, the alien has entered a plea of guilty. Second, the judge ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Specifically, the judge ordered the applicant to serve 60 days in the Harris County Jail and pay a fine of approximately \$200.

It is further noted that on April 3, 2002, the applicant was ordered removed pursuant to Section 237(a)(2)(E)(i) of the Act, because he was convicted of a crime of domestic violence.

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