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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: SAN FRANCISCO

Date: MAR 16 2010

MSC 04 363 10219

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:

SELF-REPRESENTED

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.

*Elizabeth McCormack*

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, San Francisco. 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 denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that he resided in the United States since 1974. The applicant submitted additional evidence with the appeal. The applicant requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on September 22, 2009. (NRC2009015796).

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claimed in his declaration and the United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes of the applicant’s interview reveal that the applicant first entered the United States without inspection in March, 1974. In his sworn statement dated February 13, 2006, the applicant claimed that in 1982, he left the United States for six months returning in 1983; and he left again in 1985 for five months returning in 1986.

The applicant submitted statements from [REDACTED] and [REDACTED], and [REDACTED], and affidavits from [REDACTED], and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affiants attest to personally knowing and being acquainted with the applicant or knowing the applicant resided in the United States since the 1980s. [REDACTED] and [REDACTED] and [REDACTED] attest to meeting the applicant in Mexico in 1980 and having personal knowledge that the applicant resided in the United States since 1985. [REDACTED]

██████████ and ██████████ did not become acquainted with the applicant and have knowledge of his residence in the United States until 1985. ██████████ attests to having personal knowledge of the applicant's residence in the United States since March, 1974, and knowing that the applicant was not eligible for amnesty as she accompanied him to the USCIS office. ██████████ attests to knowing the applicant for over 40 years.

██████████ and ██████████ state that they have personal knowledge that the applicant resided in the United States at ██████████, since September, 1985, to present (2004). The applicant claimed on his Form I-687 application that he lived at the above address from March, 1974, until March, 1985, and then moved to Napa, California, and lived there from March, 1985 to December, 1986. His address from December, 1986 until June, 1987 is not listed but from June, 1987, until April, 1989, he claimed he resided at Truackee, California.

██████████ states that the applicant performed temporary labor at the University of San Francisco where ██████████ worked for over 18 years. The applicant did not claim on his Form I-687 application that he worked at the University of San Francisco.

The affiants generally attest to the applicant's good moral character, being friends, socializing and playing soccer with the applicant but provide no other information about the applicant. In totality, the affidavits contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies, employment or other particulars about his life in the United States. The affiants fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the affiants had a sufficient basis for reliable knowledge about the applicant during the time addressed in their affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the affidavits and statements have little probative value.

The letter signed by ██████████ states that the applicant was employed as a detailer from January, 1988, to January, 1989. The employer provides no other information about the applicant or any evidence to verify the applicant's employment. The applicant does not list ██████████ as an employer on the Form I-687. 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. As the letter does not meet most of the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

The applicant submitted his 1982-1984 W-2 Wage and Tax Statements. The 1982 and 1983 Form W-2 statements indicate the employer's name as [REDACTED] North Hollywood, California. The employer's name on the 1984 Form W-2 statement is [REDACTED]. The applicant's Form I-687 application does not indicate the dates the applicant was employed at either place.

The applicant submitted a summary of FICA earnings from 1981-2001 reflecting the applicant's earned income in the United States in 1981, 1985, 1986, 1987 and 1988. The applicant also submitted copies of his 1982-1984 individual tax returns.

The record of proceeding contains copies of registered mail receipts, pay stubs and a money order. The registered mail receipts demonstrate that the applicant was present in the United States from June-September, 1987. The money order cannot be identified as belonging to the applicant. The pay stubs reflect that the applicant worked in the United States for several months in 1987. The record establishes that the applicant resided and worked in the United States for some part of the requisite period. Nevertheless, the AAO finds that the applicant disrupted any period of continuous unlawful residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

The applicant claimed in his sworn statement that he left the United States in 1982 for six months returning in 1983. He also stated that he left the United States in 1985 for five months returning in 1986. Both of these absences disrupted any period of continuous unlawful residence in the United States during the requisite period. The regulation implementing the statutory requirement of "continuous unlawful residence" in the United States defines that term as no single absence from the United States exceeding 45 days and absences in the aggregate not exceeding 180 days. See, section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255(a)(2)(A) and 8 C.F.R. § 245a.1(c)(1)(i).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i). "Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The AAO finds that the applicant disrupted any period of continuous unlawful residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and has not shown emergent

reasons for the length of the absence. Absent an explanation, the applicant has not shown that he resided continuously in the United States with no single absence exceeding 45 days.

Also, the applicant is inadmissible to the United States since he was ordered excluded and deported from the United States on June 11, 1996.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim to have entered the United States illegally in March, 1974 and his continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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*. Further, the applicant may have disrupted his period of required continuous residence and physical presence in the United States during the statutory period of November 6, 1986 to May 4, 1988. Furthermore, the applicant has shown that he is not inadmissible to the United States. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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