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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 231 15471

Office: LOS ANGELES

Date: MAR 23 2010

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. 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 initially denied by the Director, Los Angeles, California, and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO remanded the case and the director subsequently denied the application again. The matter is once again before the AAO on appeal. The appeal will be dismissed.

The director most recently determined 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 contends that the director failed to consider all of the supporting evidence submitted by the applicant in the most recent denial of the application. Counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim. Counsel provides copies of previously submitted documentation in support of the appeal.

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).

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on May 19, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, counsel listed the applicant's residences as "[redacted]" in El Monte, California from April 1976 to September 1976, "[redacted]," in Los Angeles, California from October 1976 to July 1981, and "[redacted]," in Los Angeles, California from August 1981 to April 1991. Furthermore, at part #31 of this Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., counsel listed "None."

The record further shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on or about October 2, 1991. At part #33 of the Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the preparer listed the applicant's residences as "[redacted]" in Los Angeles, California from May 1976 to May 1981, "404 [redacted]" in Los Angeles, California from May 1981 to November 1984, "[redacted]" in Los Angeles, California from November 1984 to December 1986, and "817 Townsend [redacted]" in Los Angeles, California from December 1986 to the date the Form I-687 application was filed on or about October 2, 1991. In addition, at part #34 of this Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the preparer listed "Assumption Church" in Los Angeles, California from October 1976 to the date the Form I-687 application was filed on or about October 2, 1991.

The fact that the Form I-687 application filed on or about October 2, 1991 and the Form I-687 application filed on May 19, 2005, contain different and conflicting information relating to the applicant's addresses of residence during the requisite period and his affiliation with Assumption Church raises questions regarding critical elements of his claim of continuous residence in the United States since prior to January 1, 1982.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied medical records and documents ranging in date from November 4, 1976 through December 10, 1979. These documents and records include a Los Angeles County University of Southern California Medical Center Patient Identification card bearing the applicant's name and date of birth, a page of medical chart entries bearing no direct reference to the applicant, pages of medical chart entries bearing a handwritten reference to the applicant and pages of medical chart entries containing typewritten references to the application.

The applicant provided a Pupil Registration Card containing typewritten as well as handwritten notations listing the applicant's name, date of birth, first name of mother and father, telephone number and address, [REDACTED] in Los Angeles, California. The card reflects that the applicant began to attend an unspecified school in September 1977 after previously attending Belvedere Elementary and that he subsequently departed to an unknown school in June 1980.

The applicant submitted a letter containing the letterhead of the Malabar Street Elementary School in Los Angeles, California that is signed by [REDACTED], who listed her position as principal. [REDACTED] stated that school records on file indicated that the applicant attended this school from September 1977 to June 1980.

The probative value of the documentation cited in the preceding paragraphs is limited to the applicant's residence in this country for that specific period from November 4, 1976 through June 1980 and cannot be considered as evidence of residence after such period.

The applicant included a computer printout indicating that the approximate year his State of California Driver's License had been issued was 1988. However, this printout is not an official document issued by the State of California Department of Motor Vehicles and specifically states that is an approximation rather than the actual date his driver's license had been issued.

The applicant provided employment affidavits that are signed by [REDACTED] and [REDACTED] respectively. [REDACTED] declared that the applicant worked at his home mowing the lawn from March 1981 through the date the affidavit was executed September 21, 1990. [REDACTED] stated that he paid the applicant \$15.00 on each occasion he washed a catering truck on Saturdays and Sundays from September 1985 to January 1990. Although both affiants indicated that the applicant lived in Los Angeles, California during the employment period, neither [REDACTED] nor [REDACTED] provided either the applicant's address of residence or 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).

The applicant submitted a declaration bearing a stamp of the Assumption Church in Los Angeles, California that is signed by [REDACTED], who listed his position as parish priest. [REDACTED] noted that the applicant had been a member in good standing of the parish from October 1976 to the date the declaration was executed on August 17, 1990. While [REDACTED] stated that the applicant lived in Los Angeles, California during that period he was a parishioner at Assumption Church, he did not provide the applicant's address of residence and failed to establish the origin of the information being attested to as required by 8 C.F.R. § 245a.2(d)(3)(v).

The applicant provided an affidavit that is signed by [REDACTED]. Mr. [REDACTED] declared that the applicant had lived with him in Los Angeles, California since 1981 when the applicant's mother had left him with [REDACTED] to return to Mexico through the date the affidavit was executed on

September 21, 1990. While ██████ attested to the applicant's residence in the United States for the period in question, his testimony was general and vague and lacked sufficient details and verifiable information to corroborate his residence in this country for the requisite period. In addition, it must be noted that both ██████ and the applicant have the same family name and it appears that ██████ is a member of the applicant's family with a direct interest in the outcome of these proceeding rather than a disinterested third party witness.

The applicant included an affidavit signed by ██████ who declared that the applicant was absent from the United States when he traveled to Mexico from February 1988 to March 15, 1988. Nevertheless, the probative value of ██████ testimony is severely limited as she attested only to the applicant's purported absence from this country rather than providing any direct, specific, and verifiable testimony regarding the applicant's residence either before or after such absence.

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 most recently denied the Form I-687 application on January 17, 2008.

On appeal, counsel contends that the director failed to consider all of the supporting evidence submitted by the applicant in the most recent denial of the application. The fact that the director failed to address all of the supporting documents contained in the record is acknowledged and noted. Nevertheless, the director's failure to consider such evidence is considered to be harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulation at 8 C.F.R. § 245a.2(d)(5) as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate his residence in this country during the period in question have been considered. Although the applicant submitted evidence that tends to demonstrate his residence in the United States from November 4, 1976 through June 1980, the record is absent supporting documents containing specific and verifiable testimony to substantiate his residence in this country subsequent to June 1980 through the date he attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988.

The absence of sufficiently detailed supporting documentation and the conflicting testimony contained in the two separate Form I-687 applications in the record seriously undermine 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.