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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: SAN FRANCISCO

Date: **OCT 25 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal 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 had submitted sufficient evidence in support of such claim.

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 "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 July 15, 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, the preparer listed [REDACTED] from July 1981 to July 1990. In addition, at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the applicant listed a single absence when he travelled to Canada for an unspecified number of days because of a family illness from July 1987 to September 1987.

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 three separate Form I-687 applications. The applicant filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on May 22, 1990. At part #32 (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the Form I-687 application was revised as of April 30, 2004 and again on October 26, 2005) of this Form I-687 application where applicants were asked provide information regarding their immediate family members, the preparer listed the applicant's spouse, [REDACTED] daughter, [REDACTED], and sons, [REDACTED] and [REDACTED], as well as brothers and sisters. Further, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer listed the applicant's residences as [REDACTED] from March 1981 to October 1983 and [REDACTED] from October 1983 to July 1989. In addition, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed a single absence from this country of twenty-four days when he travelled to India because of a family illness from July 24, 1987 to August 17, 1987. The applicant also included an Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS dated April 27, 1990. At questions #7 and #8 of this class membership determination form the applicant testified that he first entered the country without inspection at an unspecified location in March 1981. At questions #10 through #12 of this class membership determination form the applicant testified that he was absent from the United States from July 24, 1987 to August 17, 1987.

The applicant filed another separate Form I-687 application on August 29, 1990. At part #32 of this Form I-687 application where applicants were asked provide information regarding their immediate family members, the applicant listed his spouse, [REDACTED], daughter, [REDACTED], and sons, [REDACTED] and [REDACTED]. Additionally, at part #33 of the Form I-687 application 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 [REDACTED] from November 1981 to the date the application was filed on August 29, 1990. Furthermore, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed a single absence from this country of twenty-nine days when he travelled to Canada because of a family illness from August 13, 1987 to September 12, 1987. The applicant also included a "Form for Determination of Class Membership in CSS v. [REDACTED]" dated August 6, 1990 in which he testified at question #6 that he first entered the country without inspection at an unspecified location in November 1981. At questions #8 and #9 of this class membership determination form the applicant testified that he was absent from the United States from August 13, 1987 to September 12, 1987.

The applicant filed another separate Form I-687 application on September 24, 1990. At part #32 of this Form I-687 application where applicants were asked provide information regarding their immediate family members, the applicant listed his spouse, [REDACTED], daughter, [REDACTED], and sons, [REDACTED] and [REDACTED]. In addition, at part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first

entry, the preparer listed the applicant's residences as [REDACTED] from November 1981 to July 1990. Further, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed a single absence from this country of twenty-nine days when he travelled to Canada because of a family illness from August 13, 1987 to September 12, 1987. The applicant also included a "Form for Determination of Class Membership in CSS v. [REDACTED] dated August 7, 1990 in which he testified at question #6 that he first entered the country without inspection at an unspecified location in November 1981. At questions #8 and #9 of this class membership determination form the applicant testified that he was absent from the United States from August 13, 1987 to September 12, 1987.

The applicant provided contradictory testimony relating to his date of entry into the United States, his addresses of residence in this country and the dates he resided at such addresses, and the dates, duration, and country to which he traveled during his absence from this country in 1987 on the four Form I-687 applications and three determination forms contained in the record. The applicant's contradictory testimony relating to critical elements of his claim of residence in the United States for the requisite period seriously impairs his credibility and the credibility of such claim.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted three separate affidavits signed by [REDACTED] and dated August 10, 1990, August 28, 1990, and September 23, 1990, respectively. In the affidavit dated August 10, 1990, [REDACTED] declared that the applicant visited Canada in July and August of 1987 and that he gave the applicant a ride in his car. In the affidavits dated August 28, 1990 and September 23, 1990, [REDACTED] revised his prior testimony by stating that the applicant had been absent from this country when he travelled to Canada from August 13, 1987 to September 12, 1987. The fact that [REDACTED] provided conflicting testimony relating to the dates of the applicant's absence from the United States in 1987 severely limits the probative value of these affidavits.

The applicant provided an affidavit signed by [REDACTED] who noted that the applicant resided with him at an address in Calgary, Alberta from August 15, 1987 to September 10, 1987 when the applicant travelled to Canada. However, [REDACTED] only attested to the applicant's absence from the United States in 1987 without providing any additional testimony regarding the applicant residence in this country for the required period.

The applicant included two affidavits signed by [REDACTED] and single affidavits signed by [REDACTED] and [REDACTED]. While all of these affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general and vague and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

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 January 22, 2007.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant had submitted sufficient evidence in support of such claim. 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. However, the supporting documents contained in the record lack specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. Further, as has been previously discussed, affiant, [REDACTED] revised his original testimony relating to the dates and duration of applicant's absence from the United States in 1987. More importantly, the applicant himself has provided contradictory and conflicting testimony relating to critical elements of his claim of residence in this country since prior to January 1, 1982. Such discrepancies cannot simply be attributed to mistakes or the passage of time as the applicant and [REDACTED] provided the majority of the contradictory testimony within a five month period between May and September of 1990.

The absence of sufficiently detailed supporting documentation and the conflicting testimony cited above 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.

According to evidence in the record, on February 3, 2000, the applicant was charged on two separate counts; disorderly conduct/prostitution in violation of section 647(b) of the California Penal Code (PC), and keep/live in a house of ill fame in violation of section 315 PC. Both charges were dismissed (Court No. [REDACTED]). On February 7, 2004, the applicant was detained on the charge of disorderly conduct/prostitution in violation of section 647(b) PC. The applicant completed pretrial diversion and the charge was dismissed.

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