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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

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FILE: MSC-05-358-11295 Office: LOS ANGELES Date: NOV 04 2008

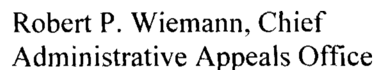
IN RE: Applicant:

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. The file has been returned to the office that originally decided 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.



Robert P. Wiemann, 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 District Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found that the evidence submitted with the application failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that previous employment letters submitted by the applicant referred to '[redacted]" The applicant, [redacted] failed to establish that these letters referred to him.[1] The director also noted that the dates on pay stubs submitted from one of the employers did not correspond to the dates of employment listed in either the letter or the Form I-687 application. The director found that the evidence submitted by the applicant lacked credibility.

On appeal the applicant, through counsel, states that the applicant did not receive a Notice of Intent to Deny (NOID) and therefore was not afforded an opportunity to supplement his application prior to the denial. Counsel also states that the evidence submitted by the applicant was sufficient to meet his burden of proof. The applicant has submitted additional written statements in support of his appeal, including three affidavits submitted to establish that the applicant and '[redacted]' are one and the same person.

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 245A(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) 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. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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[1] It is noted that the applicant indicated on a Form I-687 application signed on January 21, 1994 that he had used a similar name as an alias. The applicant also listed the name [redacted] as an alias.

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).

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 applicant 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.

As noted above, counsel states that the applicant never received a NOID. Pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement, the director is required to issue a NOID before denying an application for class membership. Here, the director did not deny the application for class membership. Instead, the director adjudicated the Form I-687 application on the merits. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

Thus, the only issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 23, 2005. At part #30 of the Form I-687 application, where applicants were asked to list all residences in the United States since their first entry, the first period of residence listed by the applicant began in March 1977. At part #33 of the application, where applicants were asked to list their employment in the United States, the first period of employment listed by the applicant began in October 1977.

The applicant submitted written statements and some pay records to establish his employment in the United States during the requisite period. Some of these documents refer to

. Others of these documents refer to . The director found that the applicant failed to establish that he had worked under the alias It does not appear that the director made a finding regarding the alias .

In cases where an applicant claims to have met any of the eligibility a criterion under an assumed name, the applicant has the burden of proving was in fact the person who used that name. 8 C.F.R. § 245a.2(d)(2)(i). In order to establish common identity, an applicant may submit "affidavits by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2)(ii).

The applicant submitted the following affidavits to establish common identity:

- An affidavit from dated January 20, 1994. The affidavit includes a picture of the applicant. The affiant states that he has known the applicant since 1977. The affiant claims to know the individual in the picture affixed to the affidavit as and

- An affidavit from dated January 3, 2007. The affidavit includes a picture of the applicant. The affiant claims to know the individual in the picture affixed to the affidavit as and The affiant states that he met the applicant in 1988 when he began working at San Antonio Community Hospital.

- An affidavit from dated January 3, 2007. The affidavit includes a picture of the applicant. The affiant states that she met the applicant in 1985 while working at San Antonio Community Hospital. The affiant claims to know the individual in the picture affixed to the affidavit as and .

- An affidavit from dated January 3, 2007. The affidavit includes a picture of the applicant. The affiant claims to have met the applicant in 1997 while working at San Antonio Community Hospital. The affiant claims to know the individual in the picture affixed to the affidavit as and

The AAO finds that the applicant has established that he was, in fact, the person who used the names and , as required by 8 C.F.R. § 245a.2(d)(2)(i).

The applicant submitted the following documents relating to his employment in the United States during the requisite period:

- Two letters from Quality Painting Company, Inc. One letter is dated September 17, 1993 and it is signed by , President of Quality Painting Company. The letter states that was employed by Quality Painting Co. from October 10, 1977 to August 29, 1981. The second letter is dated June 26, 2006 and it is signed by who also identifies himself as the President of Quality Painting Company. The letter states that " worked for Quality Painting Co. from October 1977 to August 1981. The record also contains a copy of an earnings statements dated October 21, 1978 and made out to " Both of the letters fail to comply with the regulations relating to past employment records. For example, the letters do not provide the applicant's address at the time of employment, do not state the applicant's job duties during his employment and do not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Thus, the letters and the earnings statement have little weight as evidence of the applicant's residence during the requisite period.

- A statement from owner of and Land Maintenance. The statement, which is undated, states that was employed by and Land Maintenance from July 1981 until July 1984. This letter is deficient in that it does not comply with the regulations relating to past employment records. For example, the letter does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). See, *Matter of E-M-* 20 I&N Dec. at 81. However, the letter lacks any details that would lend it credibility. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two letters from Food for Life Baking Company, Inc. One letter is dated August 24, 2005 and is signed by . The other is not dated and appears to have been signed by as well. The letters state that was employed by Food for Life Baking Co. for four weeks, from May 5, 1984 to June 5, 1984. The record also contains Earnings Statements issued by Food for Life Baking Company to ' a." The dates on these Earnings Statements range from June 1985 to July 1985, and thus do not correspond with the dates of employment listed in the letter. This is a material inconsistency which detracts from the credibility of these documents. Because of this inconsistency, the letters and the earnings statements will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from , Manufacturing Manager of Fey Automotive Products. The letter, dated October 22, 1993, states that was employed by Fey Automotive Products from August 1984 to October 1984. The applicant also submitted a copy of an earnings statement from Fey Manufacturing Company, Inc. The earnings statement is for the period ending September 1, 1985. The date on the earnings statement conflicts with the dates of employment provided in the letter. This is a material

inconsistency which detracts from the credibility of these documents. Because of this inconsistency, the letter and the earnings statement will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from Employment Coordinator for the San Antonio Community Hospital. The letter, dated November 22, 1993, states that had been employed as a Food Service Worker I since October 25, 1985. There is also a more recent letter from , Employment Coordinator for the San Antonio Community Hospital, dated January 2, 2007. The letter states that the applicant was employed as a Food Service Worker from October 25, 1985 until August 2, 2004. These letters provide some evidence of the applicant's employment in the United States during the requisite period.

- An Absentee Calendar for 1987 which bears the name . No employer name is listed on the document. However, this document lists the hire date for as October 25, 1985. This is consistent with the information provided in the letter from San Antonio Community Hospital. Together with the letters from San Antonio Community Hospital, this document provides some evidence of the applicant's employment in the United States during the requisite period.

The applicant also submitted the following affidavits and statements in support of his application:

- Two affidavits from one dated June 27, 2006 and another dated December 1, 1993. The affiant states that the applicant is her nephew and that he lived with her and her husband from 1977 until 1987. In the 2006 affidavit, the affiant also states that the applicant "was working under the name of for some time." She does not mention the name . Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks any verifiable details. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two affidavits from , one dated August 29, 2005 and another dated January 17, 2007. The affiant states that he has known the applicant since 1985 and that the applicant married the affiant's sister in 1992. The affiant further states that the applicant lived with him at . in Ontario, California from March 1987 until August 1988. The affiant does not claim to have knowledge of the applicant's residence in the United States prior to 1985.

The record also contains a report from the California Department of Motor Vehicles (DMV) dated July 8, 1993. According to this report, the applicant was issued an identification card on May 13, 1980. The record also contains a copy of a California Driver's License issued to the applicant on March 3, 1986 and a copy of an Interim Driver's License issued to the applicant on

November 7, 1989. These documents constitute some evidence of the applicant's residence in the United States for at least a portion of the requisite period.

The record also contains copies of six envelopes purportedly sent from Mexico to the applicant in the United States. Not all of the postmarks on the envelopes are legible. The earliest legible postmark is from March 1985. The applicant has also provided copies of the letters that were supposedly contained in those envelopes. The letters are written in Spanish and English translations have not been provided. The letters have dates ranging from March 26, 1985 to April 26, 1989. These letters constitute some evidence of the applicant's residence in the United States for at least a portion of the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The evidence must be evaluated not by its quantity but by its quality. *Matter of E-M, supra* at 80. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory information in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.

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