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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: HOUSTON
MSC 05 305 13302

Date: FEB 23 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:

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.

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, Texas, 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. The director further determined that the applicant had failed to provide requested court documents and arrest records relating to his misdemeanor conviction for a criminal offense involving a controlled substance. 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, the applicant reiterates his claim of residence in this country for the required period and asserts that submitted sufficient evidence to support such claim. The applicant objects to the director's denial of the application on a variety of procedural and substantive grounds.

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 "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.

The first issue to be examined 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 August 1, 2005.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits that are signed by [REDACTED]

[REDACTED], and [REDACTED]

While all of these affiants attested to the applicant's residence in the United States for the period in question, 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 February 2, 2009.

On appeal, the applicant contends that USCIS erred in issuing two separate notices of intent to deny to him prior to the denial of his Form I-687 application. However, a review of the CSS/Newman Settlement Agreements demonstrates that there is no language limiting the number of notices of intent to deny that USCIS may issue to an applicant whose Form I-687 application is to be denied. *See* Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement.

The applicant asserts that USCIS failed to adjudicate his application in a timely manner. Nevertheless, the processing times for the adjudication of Form I-687 applications listed in the CSS/Newman Settlement Agreements are approximate and clearly anticipate an increase in processing times for adjudication directly proportionate to the total number of Form I-687 applications filed. *See* Paragraph 12, page 16 of the CSS Settlement Agreement and paragraph 12, page 10 of the Newman Settlement Agreement.

The applicant argues that USCIS failed to forward his denied Form I-687 application for review by the Special Master as required by the CSS/Newman Settlement Agreements. In the present case, the record shows that the applicant's Form I-687 application was denied because he failed to provide requested documents to establish his admissibility as required by 8 C.F.R. § 245a.2(d)(5) and establish continuous unlawful residence in the United States since prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988 as required by both section 245A(a)(3) of the Act and 8 C.F.R. § 245a.16(b). As the applicant's Form I-687 application was denied for these reasons rather than his failure to establish a claim to class membership, such decision is not subject to the review of the Special Master. *See* Paragraphs 9 and 11, pages 14, 15, and 16 of the CSS Settlement Agreement and paragraphs 9 and 11, pages 7-9 and pages 9-10 of the Newman Settlement Agreement.

The applicant reiterates his claim of residence in this country for the required period and asserts that submitted sufficient evidence to support such claim. The applicant contends that USCIS failed to make any attempt to contact the affiants who supplied supporting documents and verify their testimony. The applicant asserts that the director employed an improper standard to evaluate the testimony contained in the supporting documentation. The applicant's remarks on appeal regarding the sufficiency of evidence he submitted to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. The applicant fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence. Further,

even if director utilized a higher evidentiary standard to adjudicate the instant application, it is 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).

Therefore, the applicant's arguments that USCIS failed to follow the proper procedures in denying his Form I-687 application as specified in the CSS/Newman Settlement Agreements cannot be considered as persuasive.

The absence of sufficiently detailed supporting documentation seriously undermines 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.

The next issue to be examined in this proceeding is whether the applicant has provided requested documents relating to his criminal history in order to establish his admissibility as required by 8 C.F.R. § 245a.2(d)(5).

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by Service or its successor USCIS. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service or its successor USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

An alien is inadmissible if he or she has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II). An alien is also inadmissible if the consular officers or immigration officers know or have reason to believe he or

she is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

A review of the record reveals that the applicant was arrested by the Houston, Texas Police Department and charged with a violation of section 483.041 of the Texas Health and Safety Code, Possession of a Dangerous Drug, on May 11, 2000 with offense report number, [REDACTED]. The record shows that the applicant was subsequently convicted of a misdemeanor violation of section 483.012 of the Texas Health and Safety Code, Delivery of or Offer of Delivery of a Dangerous Drug, on June 27, 2000 with court and case number [REDACTED]. The record shows that the director issued a Form I-72 to the applicant on November 5, 2007, requesting that the applicant provide any and all arrest reports and court records relating to this his criminal conviction. The record further shows that the director subsequently issued a notice of intent to deny to the applicant on February 2, 2009, requesting that the applicant provide arrest reports and court records reflecting the amount and type of drug that he had been in possession of when he had been arrested by the Houston, Texas Police Department and charged with a violation of section 483.041 of the Texas Health and Safety Code, Possession of a Dangerous Drug, on May 11, 2000. While the applicant has submitted a certified court disposition from the Harris County, Texas District Clerk and a letter from the Houston, Texas Police Department, these documents do not contain any information reflecting the amount and type of drug that he had been in possession of when he was arrested on May 11, 2000. Consequently the applicant has failed to provide documents necessary for the adjudication of the application and to demonstrate that he is admissible to the United States as required pursuant to 8 C.F.R. § 245a.2(k)(5).

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. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden. By not providing necessary evidence, he has failed to establish he is admissible under the provisions of section 245A of the Act. For this additional reason, application may not be approved.

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