

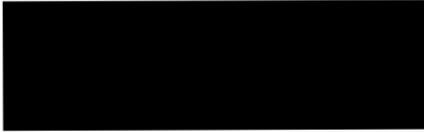
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U.S. Citizenship
and Immigration
Services

L 1



FILE: [REDACTED]
MSC 05 064 10065

Office: LOS ANGELES

Date: **AUG 28 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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.

The 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 submitted the following documentary evidence:

AFFIDAVITS/WITNESS STATEMENTS

- [REDACTED] submitted a sworn affidavit wherein he stated that the applicant was his friend and that he had personal knowledge that the applicant had resided in the United States from June of 1981 until May 6, 2005 (the date of the affidavit).
- [REDACTED] submitted a sworn affidavit wherein he stated that he had personal knowledge that the applicant resided in the United States from November of 1981 until May 17, 2005 (the date of the affidavit). The affiant does not state how he knows the applicant, but states that the applicant is “a good person.”

The documentation submitted by the applicant does not establish his continuous unlawful presence in the United States for the requisite period. As stated earlier in this decision, 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. The evidence submitted by the applicant in support of his application includes the above referenced witness statements. The witness statements indicate generally that the affiants know the applicant,

and that the applicant has resided in the United States since 1981. Neither of the statements provide detailed information of the affiant's relationship with the applicant or establish that the applicant has resided continuously and unlawfully in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements do not provide detailed information establishing the extent of the affiant's association or relationship with the applicant, or detailed accounts of the affiant's ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative, witness statements and related proof 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. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 applicant's reliance upon documents with minimal probative value, it is concluded that the witness statements presented fail to establish continuous residence in an unlawful status in the United States for the requisite period.

EMPLOYMENT

- [REDACTED], president of [REDACTED], a farm contracting firm, states in his letter of July 28, 2005 that the applicant was employed by his organization for approximately 100 days per year from November of 1981 through December of 1987 as a farm laborer. Mr. [REDACTED] states that he is unable to provide payroll records because those records were destroyed in a fire. The same employer provided a statement on September 27, 2004 stating that the applicant was employed for a total of 105 days from May 1, 1985 through May 1, 1986.

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 employment statements submitted by the applicant are of little probative value as they fail to provide all information required by the above-cited regulation. The employment attestations do not state the applicant's address during employment, or provide the dates of employment and periods of layoff. The employer did not provide copies of company records and states that those records were destroyed in a fire. Further, the employment letters are contradictory in that one states that the applicant worked there for one year and the other for six years. The employment documentation does not establish the applicant's continuous presence in the United States during the requisite period.

The record contains other contradictory information relating to the applicant's presence in the United States during the requisite period. The Form I-687 executed by the applicant under penalty of perjury on October 29, 2004, states that the applicant was employed by [REDACTED] from May 1, 1985 through May 1, 1986. It further states that the applicant was employed as a landscaper from June of 1986 through January of 1993. The information is contradictory to the employment information provided by [REDACTED] in his letter of July 28, 2005.

The applicant stated in his Form I-687, under penalty of perjury, that his first residence in the United States was in Mendota, CA in December of 1984. This is in contradiction to the applicant's claim that he has continuously resided in the United States since 1981. The record also contains two applications for political asylum executed by the applicant. In those documents, and on the Form G-325A submitted in support of the asylum application, the applicant indicates that he first arrived in the United States in June of 1993. On November 24, 1993, the applicant executed an application for employment authorization stating thereon that he last entered the United States in June of 1993.

None of these discrepancies have been explained by the applicant. The discrepancies noted are material to the applicant's claim for benefits in this instance because they bear directly on the applicant's presence in the United States during the requisite period. In light of these discrepancies, the evidence provided by the applicant is not deemed credible and shall be afforded little weight. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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*. 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.