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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 228 10866

Office: ATLANTA (CHARLOTTE)

Date:

AUG 28 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. 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.

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, Atlanta. 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

- [REDACTED] submitted a sworn statement wherein he stated that he had known the applicant for over 25 years. The affiant states that the two first met at a Paragon Plastics Christmas party in 1981. At that time the affiant learned that the applicant was from Uruguay, and the applicant later came to work for the same company. The affiant states that the two have maintained contact since that time and moved to North Carolina together when the Paragon Plastics plant closed in Massachusetts. The affiant states that he can remember the events of the 1981 Christmas party because he was single at that time, and drinking beer at the party. The affiant states that he married in 1982 and stopped drinking. The affiant provides no additional information about his relationship with the applicant.
- [REDACTED] submitted a statement that indicates that it was sworn to before an attorney. The statement is not notarized. [REDACTED] states that she is acquainted with the applicant from her “place of work,” and that she has personal knowledge that the applicant resided in the United States from December of 1981 until April of 1988.

- [REDACTED] submitted a statement that indicates that it was sworn to before an attorney. The statement is not notarized. [REDACTED] states that he had known the applicant for over four years, and can attest to the applicant having been in the United States since November of 1985. The statement writer provides no additional information.
- [REDACTED] submitted a sworn notarized statement wherein he stated that he has known the applicant for over four years, and can attest that the applicant has resided in the United States since April of 1986. The affiant provides no additional information.

OTHER EVIDENCE

The applicant presented additional evidence in support of his claim. The following evidence was submitted that is relevant to the requisite period:

- Pay stubs for the years 1987, 1988 and 1989.
- A 1988 W-2 Form from Nypro, Inc.
- A new employee checklist dated March 17, 1987 from the applicant's employer, the E.B. Kingman Co.
- Copies of envelopes bearing the applicant's name and address with 1987 post mark dates.
- A 1987 Goodyear receipt in the applicant's name.
- An insurance company record of unsafe driver points showing that [REDACTED] and operating under the applicant's policy, had traffic citations in 1985 and 1986.
- A 1987 utility bill.
- A 1987 rent receipt.
- A 1987 credit union receipt.

The applicant provides no additional evidence in support of the application.

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 in support of the applicant's claim consists of the above listed witness statements, and other evidence establishing that the applicant was present in the United States from 1985 - 1989. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the witness statements provided detailed information establishing the extent of the witness' association or

relationship with the applicant, or detailed accounts of his or her ongoing association establishing a relationship under which the witness 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. The affidavit of [REDACTED] states that the affiant has known the applicant for over 25 years and met him at a 1981 Christmas party hosted by his employer, Paragon Plastics. The affiant does not provide details of any ongoing relationship with the applicant for the 25 years he claims to have known the applicant to establish that he has knowledge of the applicant's whereabouts and circumstances during that 25 year period. [REDACTED] states in his affidavit that the applicant came to work at his place of employment, Paragon Plastics, and that the two moved to North Carolina at the same time when that plant closed. The record does not, however, contain any payroll receipts for the applicant from Paragon Plastics. The applicant does not list Paragon Plastics as an employer on the Form I-687.¹ The remaining witness statements state generally that the writers have known the applicant for a few years and that each can attest to the applicant's presence in the United States for a portion of the requisite period. The statements provide no detail of the writer's relationship with the applicant or provide any basis for their claimed knowledge of the applicant's residence.

To be probative, affidavits or 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 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 documentation submitted fails to establish continuous residence in an unlawful status in the United States for the requisite period.

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.

¹ The record contains a letter from Euro-Matic Plastics indicating that the applicant was employed by the company from July of 1990 – April of 2004. There is no indication of record that the applicant worked for a predecessor plastics company in Massachusetts in the 1980s.