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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
MSC 06-098-23550

Office: LOS ANGELES

Date:

DEC 02 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:

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.


John F. Grissom, Acting 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He further states on his Form I-694 Notice of Appeal of Decision that he will submit additional evidence and a brief within 30 days. However, the applicant's Form I-694 was received on February 7, 2007 and as of the date of this decision, Citizenship and Immigration Services (CIS) has not received additional documentation from the applicant.

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 established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and family, affidavits of employment, tax documents and identity documents issued to the applicant and birth certificates for three of the applicant’s children. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant submitted affidavits from [REDACTED], [REDACTED], and [REDACTED]. Each affiant states that he or she knows that the applicant has resided in the United States for part or all of the requisite period and that they personally know that the applicant was physically present in the United States during the required period. [REDACTED] and [REDACTED] state that they have known the applicant since prior to 1982. However, none of these affiants states where they first met the applicant or when they first saw him in the United States. The affidavits further fail to state how they were able to determine the date they first met the applicant, or whether there were periods of time during the requisite period when they did not see the applicant. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

When considered collectively, though these affidavits carry some weight as evidence of the applicant's residence in the United States during the requisite period, these statements do not provide sufficient testimony to satisfy the applicant's burden of proving that he maintained continuous residence in the United States during the requisite period.

Though the applicant also submits affidavits from affiants [REDACTED] and [REDACTED], who state that they personally know that the applicant has resided in the United States since before 1982, each of these affiants states that they first met the applicant after the requisite period ended. Therefore, they cannot have been personally aware of his residence in the United States during the requisite period. Because of this, these affidavits carry no weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted an employment affidavit from [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

However, this employment affidavit does not provide the applicant's address at his time of employment. Though the affidavit does state that the information was not taken from company records because they were not maintained, no form-letter stating that these records are unavailable was included. Further, the affiant failed to state how he was able to determine the applicant's claimed start date of July 1981. In addition to this lack of detail, the affidavit states that the applicant was employed as a salesman. However, this is not consistent with the applicant's Form I-687 in the record, on which he states that he was a carpenter when he worked for a furniture manufacturer from 1981 to 1986.

The applicant has submitted a California Identification Card, which was issued to him on December 18, 1986 and tax documents, including Forms California Tax Forms 540A from 1985, and 1987 and a Form 1040 from 1988 and a Form W-2 issued in 1986. However, the copy of the Form 540A from 1985 is of poor quality and, therefore, it is not clear whether the applicant signed this Form. The Form 540A for 1987 is not signed and the applicant has not offered proof that he filed this form. Similarly, the copy of the Form 1040 in the record is not signed by the applicant and he has not

offered proof that he filed this form. The Form W-2 for 1986 is a partial copy and the section of that form that indicates who it was issued to does not appear. Therefore, it cannot clearly be associated with the applicant. Therefore, though the California Identification Card issued to the applicant in 1986 offers proof of his presence in the United States in 1986, the Forms 540A and 1040 tax documents in the record can only be accorded very minimal weight as evidence that he resided in the United States during the requisite period and because the portion of the Form W-2 cannot clearly be associated with the applicant, it carries no weight as evidence of his residence during the requisite period.

Also in the record are three birth registration certificates for the applicant's children, two of whom were born in Mexico during the requisite period. The birth registration certificate for [REDACTED] states that his birth was registered in Tuxpan, Nayarit, Mexico on October 14, 1983 and that his date of birth was September 5, 1983. Though not evident in the translated version of this document, at the bottom of the photocopy of its original, there is section of the form that states it is for the signatures of the parents or of any other person who is present at the registration of the birth of this child. In this section, the applicant's signature appears. This indicates that the applicant was present in Mexico on October 14, 1983.

The second birth registration certificate in the record that pertains to the requisite period indicates that the applicant's second child, [REDACTED] birth was registered in Tuxpan, Nayarit, Mexico on October 10, 1984 and that she was born in Mexico on September 8, 1984. The section of the form that states it is for the signatures of the parents or of any other person who is present at the registration of the birth of this child. In this section, the applicant's signature appears. This indicates that the applicant was present in Mexico on October 10, 1984.

However, when the applicant submitted his Form I-687 application, he indicated that the only time that he was absent from the United States after January 1, 1982 was from August 2 to August 20 in 1987. Similarly, when the applicant was interviewed by a CIS officer regarding his Form I-687 application in November 2006, he indicated that the only time he was absent from the United States was during the month of August in 1987.

Though the applicant was informed of this inconsistency by the director in her decision, he has not provided any explanation for this inconsistency with his appeal. This inconsistency regarding the applicant's absences from the United States during the requisite period is material to the applicant's claim in that the regulations state that to be considered to have maintained continuous residence in the United States during the requisite period, no single absence can have exceeded 45 days. *See* 8 C.F.R. § 245a.1(c). As the applicant has not provided the dates associated with these absences, CIS cannot determine whether these additional absences exceeded or were less than 45 days. Further, because the record is not consistent regarding when the applicant was absent from the United States during the requisite period, doubt is cast on his claim that he resided in the United States for the duration of the requisite period. 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 petitioner 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).

These inconsistencies are material to the applicant's claim in that they have a direct bearing on whether the applicant maintained continuous residence in the United States during the requisite period. As stated previously, 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, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.