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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-222-10247

Office: LOS ANGELES, CA

Date:

JAN 09 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. 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 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. Specifically, the director noted that documents in the record and the applicant's testimony regarding his addresses of residence during the requisite period were not consistent. The director further noted that evidence in the record regarding the applicant's employment during the requisite period was not consistent. The director denied the application as she determined 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 is eligible to adjust to Temporary Resident Status. He submits a statement in support of his application.

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)(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).

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 (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 from 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 of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 10, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] in Mendota, California from 1981 until 1986; and [REDACTED] in Santa Ana, California from June 1986 until May 1989. It is noted that the applicant first indicated that he lived in Mendota beginning in April 1985. However, his Form I-687 has been amended to show that at the time of his interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that he lived at that address since 1981. At part #32 of the application, the applicant was asked to list his absences from the United States since he first entered. Here, he showed that he returned to Mexico two times before June, 1988. His first absence was from May to June 1987 when he went for his child's birth. The second absence shown began and ended in May 1988, when the applicant went to Mexico to get married. At part #33 of his application, where the applicant was asked to show all of his employment since he first entered the United States, he first showed that he was employed by [REDACTED] in Firebaugh, California from May 1985 until May 1986. He then showed he was a self-employed gardening services provider from June 1986 until May 1988. Notes on the applicant's Form I-687 indicate that at the time of his interview with a CIS officer, the applicant indicated that he was employed by [REDACTED] from September 1981 until 1986 and that he was then employed by a hotel as a housekeeper from January 1987 until January 1989.

The record also shows that at the time of his interview with a CIS officer on March 27, 2006, the applicant indicated that he first entered the United States in August 1981.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax

receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 and then for the duration of the requisite period, the applicant provided the following:

- Two employment verification letters from [REDACTED]. The first employment letter from [REDACTED] is dated March 11, 2005. In this letter, [REDACTED] states that the applicant worked for him from May 1, 1985 until May 1, 1986. He goes on to say that he does not have employment records but that he recognizes the applicant because he had yearly contact with him. This employment letter was submitted with an affidavit confirming the applicant's employment. It is noted that though this form contains more than one section in which the employer can list periods of time that an individual was employed by him, this affidavit indicates that the applicant was only employed by [REDACTED] from May 1985 until May 1986. The second employment verification letter from [REDACTED] is dated February 18, 2006. In this letter, [REDACTED] states that the applicant was employed by him from September 1981 until April 1985. [REDACTED] again states that he does not have employment records to verify the applicant's dates of employment, but that he recognizes the applicant because they had yearly contact with each other. Because the same employer has provided employment verification documents that are not consistent regarding the applicant's dates of employment for him, and because this employer also states that information regarding the applicant's dates of employment is not taken from official records, doubt is cast on whether this employer has accurately represented the dates that the applicant worked for him during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- A birth certificate for the applicant's daughter, [REDACTED], who was born on May 31, 1987. The original, Spanish version of this birth certificate indicates that both of this child's parents resided at [REDACTED] in San Pedro Xalpa, Azcapotzalco in the Federal District of Mexico at the time of the child's birth. This birth certificate does not indicate that the applicant was present in Mexico for this child's birth. However, the applicant has shown that he returned to Mexico for that child's birth on his Form I-687. Though this document is consistent with what the applicant showed as an absence on his Form I-687, it carries no weight in establishing that the applicant resided in the United States during the requisite period. Further, that the document shows the applicant's address as being in Mexico rather than the United States casts doubt on whether the applicant was residing in the United States at the time of his daughter's birth.
- The applicant's marriage certificate that indicates that he married this wife in 1986 in Mexico City. This marriage certificate shows that at the time the applicant was married, he lived at Civilizaciones, [REDACTED] in Azcapotzalco in the Federal District of Mexico. Though the applicant indicated that he returned to Mexico to get married on his Form I-687, it is noted that he showed that marriage was in 1988 rather than in 1986. That the marriage certificate shows that the applicant's address in 1986 was in Mexico rather than the United States casts doubt on whether the applicant continuously resided in the United States for the duration of the requisite period.

Though it is noted that the applicant has submitted tax documents, Forms W-2 and additional birth certificates for children born in the United States, these documents pertain to dates subsequent to May 4, 1988. Therefore, they establish that the applicant was present in the United States after the requisite period. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

On the application, which the applicant signed under penalty of perjury, he first showed that he resided in the United States since April 1985, and worked in the United States since May 1985. He then amended his Form I-687 application during his interview with a CIS officer to show that he actually entered the United States in August 1981, and worked in the United States since September 1981. Though the applicant submitted employment verification letters as proof that he resided continuously in the United States from 1981 until 1986, these employment verification letters are not consistent regarding the applicant's dates of employment. Further, as they pertain only to the years 1981 through 1986 and not to the duration of the requisite period, they do not establish that the applicant resided continuously in the United States for the duration of that period.

In denying the application the director noted the above, and stated that the evidence submitted by the applicant in support of his application did not allow him to establish, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant attempts to explain these contradictions. He submits a statement dated July 12, 2006 in which he states that he has resided continuously in the United States for the duration of the requisite period. He states that he entered the United States in August 1981 and then worked for [REDACTED] from September 1981 until May 1986 during agricultural seasons. He does not indicate whether there were periods of time during which he did not work for this employer or state when the agricultural periods began or ended. The applicant reiterates the dates of his absences. He goes on to say that he first submitted the letter from [REDACTED] stating that he only worked from May 1985 until May 1986 for 105 days because he received the wrong information from counsel. It is noted here that [REDACTED] submitted a notarized affidavit with the applicant's employment verification letter that states that he completed the affidavit under oath. This affidavit goes on to indicate that there are penalties for making false statements on the affidavit. Advice from counsel should not have had any affect on the testimony provided by the applicant's employer regarding the applicant's dates of employment for him. The applicant states that discrepancies regarding when the applicant first entered the United States can be attributed to the passage of time. He states that he has other evidence that will now verify his residence. However, it is noted that the applicant did not submit additional evidence with his statement.

Though the applicant asserts that he is a credible witness in his statement, the regulation at 8 C.F.R. § 245a.2(d)(6) states that applicants for adjustment of status to that of a Temporary Resident must submit evidence apart from their own testimony to establish that they are eligible for this benefit. Here, the evidence submitted by the applicant is not consistent with what the applicant first showed on his Form I-687. Further, the applicant has submitted no evidence other than his own testimony that establishes that he maintained continuous residence in the United States from May 1986 until the applicant attempted to file for legalization during the original filing period, which was from May 5, 1987 to May 4, 1988. Therefore, the evidence that he previously submitted does not allow the applicant to establish that he is eligible for this benefit as it is not consistent and does not pertain to the duration of the requisite period.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has not submitted any evidence other than two employment verification letters that do not consistently show the applicant’s dates of employment. He did not submit any additional evidence to establish that he had maintained continuous residence in the United States with his appeal.

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 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 applicant’s contradictory statements in evidence he submitted and given that he has not submitted evidence that pertains to the duration of the requisite period, 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 the date he attempted to file a Form I-687 application 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.