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FILE: MSC 05 166 13053 Office: LOS ANGELES Date: JAN 10 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.

A handwritten signature in black ink, appearing to read "D. K. W.", written over a circular stamp.

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, on March 15, 2005. 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 considered the applicant's I-687 application and documents submitted in support of his claim that he first entered the United States in September 1981 and has continuously resided in the United States since that time. However, the director concluded that contradictory information had been provided in support of a Form I-140, Immigrant Petition for Alien Worker filed on the applicant's behalf in 2002. Specifically, the director noted that in support of that petition, the applicant had provided an employment letter from [REDACTED], which attested to the applicant's employment in Mexico from June 1980 through May 1983. The director therefore found that the applicant's testimony that he entered the United States in September 1981 was not credible. 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 did arrive in the United States in 1981, but was nervous during his interview and may have been confused regarding the dates. He states that although the employment letter from Trinity Industries states he was working in Mexico as of 1980, he was in fact enrolled in and attending school in Mexico during that year. The applicant further states, "Please note that the mentioned letter was given to me when I had tried to apply through labor." He contends that he has resided in the United States since 1981 and provides additional affidavits from individuals in support of this claim. The applicant also submits documentation intended to establish that he was attending school in Mexico in 1980.

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.* 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 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. In this case, the specific period in question relates to the applicant's country residence during the 1981 to 1983 period, as the disputed testimony concerns this period. 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 March 15, 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 relevant period as: (1) [REDACTED] Pacoima, California (from September 1981 until 1983); [REDACTED], Northridge, California (from 1983 to 1985); (3) [REDACTED] in Northridge, California from 1985 to 1987; and (4) [REDACTED] in Northridge, California from 1987 to 1988. At part #33 of the applicant's Form I-687, where he was asked to list all of his employment in the United States since he first entered, he indicated that [REDACTED] in Chatsworth, California employed him from 1983 until the date the application was submitted. He indicated that he was self-employed, performing construction work, from 1981 until 1983.

Preliminarily, it is noted that the applicant submitted documentation in support of his application that tends to support a finding that he has been residing in the United States continuously since 1983. This evidence includes a copy of a California photo identification issued to the applicant in December 1983, a letter from [REDACTED], dated February 3, 2005, stating that the applicant had been employed by

that company since September 22, 1983, and a letter to the applicant from the U.S. Social Security Administration (SSA), dated April 20, 2006, confirming wages paid to him in the United States by [REDACTED] from 1983 through 2004. It is noted, however, that the letter from SSA indicates that the applicant received no earnings in 1987, and neither the applicant nor his long-time employer have acknowledged any interruptions in employment. This apparent break in employment raises questions regarding the applicant's activities and whereabouts during 1987, which, if unresolved, would prohibit the approval of the application.

In support of his claim that he entered the United States prior to January 1, 1982 and resided here continuously thereafter, the applicant submitted a declaration dated March 8, 2005, in which he stated that he entered the United States in September 1981 when he was 18 years old.¹ He stated that upon his arrival, he initially lived with "my friend and his family," but did not identify them by name.

In addition, the applicant submitted the following documentation:

- A declaration from [REDACTED] who states that he was living in Los Angeles when the applicant, his friend, arrived in the United States in 1981. [REDACTED] states that he regularly spoke to the applicant and visited him, and accompanied him when he attempted to submit his legalization application following his return from a trip to Mexico in September 1987. The statement is not notarized and is not accompanied by identification; it lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; it does not include [REDACTED] telephone number, and thus cannot be verified; and it is not accompanied by any evidence that [REDACTED] resided in California for the relevant period. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with him. Moreover, his statement appears to contain a reference to the applicant as [REDACTED]" which is not the applicant's name or known alias. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.
- Notarized declarations from [REDACTED] and [REDACTED], all of whom claim that they are currently co-workers of the applicant, for anywhere from two to twenty-two years. The evidence submitted with the declarations suggests that these individuals were residing in the California during the requisite period and are employees of [REDACTED]. The declarants also provided proof of identification. All of the declarants, regardless of when they claim they started working with the applicant, state that they met the applicant in or before 1981, and that have been good friends with him and have seen him "frequently" since that time. [REDACTED] states that he met the applicant in 1981 "in the Swapmeet" where the applicant asked him for an address; Mr.

¹ It is noted that the applicant was born on December 3, 1963 and would have been 17 years old as of September 1981.

states that he met the applicant in 1981 because they have "mutual friends"; states that he met the applicant in Mexico in 1978, but saw him in the U.S. in 1981 when he visited friends; states that he met the applicant in 1981 "in a party"; states that he met the applicant in 1981 "because we played soccer together"; and states that he met the applicant in 1981 because he was "traveling by bus."

It is noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the address at which he was residing during the critical time period between 1981 and 1983. The declarants' uniformly ambiguous references to sharing "mutual friends," playing soccer, attending a party, or traveling on a bus with the applicant at some unidentified date in 1981 are not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning 24 years. For these reasons, all of these declarations from the applicant's current co-workers have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

- A letter dated January 23, 2005 from which is printed on the letterhead of " " located in Chatsworth, California. states that the applicant worked part-time for his construction company from December 1981 through November 1983. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which 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. The statement by does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Furthermore, the applicant did not identify this employer on his Form I-687.
- A form-letter "Affidavit of Witness" executed by , who states that he resides on in Northridge, California. He states that he has been acquainted with the applicant since December 1981, and that he has personal knowledge of the applicant's residence in Northridge, California from December 1981 until January 1987, and in Reseda, California from January 1987 until the date the affidavit was executed in May 1990. He states that the applicant was his neighbor from December 1981 until January 1987. did not provide proof of his identity or evidence of his residence in the United States dating back to 1981. While he states that the applicant was his neighbor from December 1981 to January 1987, and that the applicant lived in Northridge, California during this time, the applicant stated on his Form I-687 application that he lived on in Pacoima, California from September 1981 until 1983,

at which time he moved to [REDACTED] in Northridge, California. This inconsistency casts doubt on the affiant's claim that he has known the applicant since 1981, and thus his statement has little probative value.

- A notarized declaration from [REDACTED] who states that he met the applicant in 1981. [REDACTED] states that he was the manager of a restaurant [REDACTED] where the applicant worked part-time during some months of the years 1982 and 1983. Finally he states that he and the applicant are "good friends" and that they "visited frequently." The statement is not accompanied by identification; it lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; it does not include [REDACTED]'s telephone number, and thus cannot be verified; and it is not accompanied by any evidence that [REDACTED] resided in California for the relevant period. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, an address where the applicant resided and worked in the United States, how frequently he had contact with him, or whether there were periods of time in which he did not see the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.
- An "affidavit of landlord" executed by [REDACTED] who states that the applicant resided at [REDACTED] in Pacoima, California from November 1981 until July 1983, that he was the landlord for this address, and that he collected monthly rent from the applicant. [REDACTED] attached his personal IRS individual income tax returns for the years 1981 to 1983, which show that he was a painter by profession and resided at this address with his spouse and five children during this period. It is noted that he did not report receiving any income in the form of rental payments during the years 1981 to 1983. Furthermore, the submission of the "affidavit of landlord" appears to be inconsistent with the applicant's own statement that he resided with a "friend and his family" when he arrived in the United States. [REDACTED] does not claim any relationship with the applicant other than that of a landlord-tenant relationship and offers no details that would suggest that would lend credibility to a claim that the applicant resided with him and his family during this time. For these reasons, the affidavit can be given very little weight in corroborating the applicant's claim that he resided in the United States during the 1981 to 1983 period.

In addition, the record of proceeding contains a Form I-140, Immigrant Petition for Alien Worker, filed on behalf of the applicant by [REDACTED] in 2002. To establish the applicant's qualifications as a skilled worker, the employer submitted an approved Department of Labor Form ETA-750, Application for Alien Employment Certification, which was signed by the applicant under penalty of perjury on May 20, 1999. The applicant indicated that he was employed in Mexico on a full-time basis by [REDACTED] from March 1978 until May 1983. The immigrant petition was also accompanied by two employer letters from [REDACTED] bearing the [REDACTED] company logo, confirming the applicant's employment in Mexico from June 1980 to May 1983.

The director denied the application for temporary residence on July 22, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible. Specifically, the director referenced the employment verification letters from Trinity Industries de Mexico indicating that the applicant was indicating that company in Mexico until May 1983. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but emphasizes that he was nervous during his interview with a CIS officer and may have confused some dates. The applicant acknowledges that the above-referenced employment letter indicates that the applicant was working in Mexico, but states that he has proof that he was actually enrolled in and attending school in Mexico in 1980. The applicant states that the referenced letter "was given to me when I had tried to apply through labor," but he does not further address the contents of the letter.

In support of his claims, the applicant submits a photocopy of what appears to be a type of identification card issued to him by the *Secretaria de Education Publica*, dated September 2, "1980-1981," and a receipt from *Direccion General de Educacion Secundaria Tecnica*, in Estado de Mexico, dated January 2, 1981. Neither document is accompanied by an English translation.

The applicant also submits a letter from [REDACTED] who states that he met the applicant in 1981 at a barbeque held at the home of one of his co-workers. [REDACTED] states that he and the applicant exchanged telephone numbers and visited each other whenever they could. [REDACTED] provides a copy of his California driver's license as evidence of his identity, as well as a paystub from October 1978, a rent receipt from May 1986, and a paystub from April 1986. The statement is not notarized and is not accompanied by evidence that [REDACTED] resided in the United States for the duration of the requisite period; it lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; and it does not include [REDACTED]'s telephone number, and thus cannot be verified. [REDACTED] does not indicate that he has direct, personal knowledge of the applicant's residences throughout the requisite period. He states little other than he met the applicant at a barbeque held at the home of an unidentified person in an unidentified location in 1981. As the statement is significantly lacking in detail and is not amenable to verification, its probative value is extremely limited.

Finally, the applicant submits a letter from [REDACTED] who states that she met the applicant through a mutual friend in 1981 and that she has kept in touch with him and been a good friend to him ever since. The letter is accompanied by proof of [REDACTED]'s identity and evidence that she has been employed by the applicant's current employer since 1978. However, the statement is not notarized and [REDACTED] offers no indication that she has direct, personal knowledge of the applicant's continuous residence in the United States. She does not indicate where or under what circumstances she met the applicant, the addresses at which the applicant lived during the requisite period, her frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence. The lack of detail is significant, considering [REDACTED]'s claim that she has been a good friend to the applicant for 24 years. Like the other affidavits submitted previously, this statement lacks probative value.