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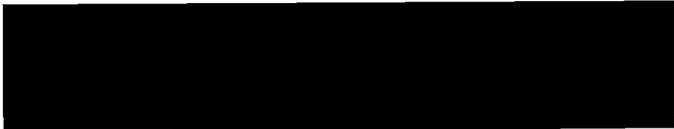
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: MSC-05-232-11395

Office: SAN FRANCISCO

Date: JUL 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.

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, San Francisco. 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 his claim of residence in the United States since before January 1, 1982, and he submits additional evidence.

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).

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) 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. See 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 20, 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 first address in the United States to be at [REDACTED], Calexico, California, from July of 1981 to August of 1988. Similarly, at part #33, he showed his first employment in the United States to be for Sun Valley Harvest FLC, Brawley, California, from July of 1981 to June of 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit, dated December 13, 2005, from [REDACTED] in which he stated that he has known the applicant since 1979 and that they worked together in the lettuce and broccoli fields. He does not indicate where he met the applicant or provide any information regarding where the applicant was residing since 1979. The affidavit therefore has no weight as evidence of the applicant’s residence in the United States during the requisite period.
- An employment letter, dated December 5, 2005, from [REDACTED], owner of Sun Valley Harvest Farm Labor Contractor, in which he stated that he employed the applicant seasonally from July of 1981 to August of 1987 as a farm laborer. He further stated that the applicant was paid in cash and that the company did not keep proper employment records for him. He also stated that his company ceased its operations in 1989 and that the declaration is based upon personal knowledge. Although generally consistent with the applicant’s claim of employment for Sun

Valley Harvest FLC during the requisite period, the declaration does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not specify the address(es) where the applicant resided throughout the claimed employment period, is not notarized or attested to under penalty of perjury, and does not indicate the employer's willingness to come forward and give testimony if requested. Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In a Notice of Intent to Deny (NOID) dated March 20, 2006, the director indicated that the evidence submitted by the applicant was insufficient to establish the applicant's residence in the United States since before January 1, 1982. The director noted that the applicant indicated that he returned to Mexico from November 1988 to August 2001 and that his wife had never come to the United States, but that his daughter was born in Mexico in November 1987. The applicant failed to respond to the NOID.

In denying the application the director noted that the application was being denied for the reasons stated in the NOID. The director also noted that the applicant failed to demonstrate that he had attempted to file an application during the original legalization filing period, as claimed. The AAO notes that the applicant's sworn statement on the Form I-687 Supplement has been accepted as sufficient evidence that he did attempt to timely apply for legalization.

On appeal, the applicant attempts to explain the inconsistencies found in the record. He asserts that he confused the dates and that he used to come to the United States to work in the fields and that he did travel to Mexico in November of 1987 for the birth of his daughter, but that he promptly returned to the United States to continue working. He further asserts that he is a good worker and that he has contributed to the economy of this country. The AAO notes that, consistent with his statement on appeal, the applicant had previously indicated at his interview that he had visited Mexico earlier in 1987, at least nine months before the birth of his daughter. His statements, however, are not consistent with his claim on his Form I-687 Application that his only absence from the United States since entry was from November 1988 to August 2001.

The applicant also submitted the following attestations on appeal:

- An affidavit, dated December 12, 2005, from [REDACTED], a farm labor contractor, in which he states that he employed the applicant from April 5, 1985 through December 15, 1985 and April 5, 1986 through December 15, 1986 as a farm worker, that the employment was seasonal, and that the applicant resided at [REDACTED] in Parlier, California at the time he was employed. Here, the statement made by the affiant is inconsistent with the statements made by the applicant on his Form I-687 application at part #33 where he indicated that he was employed by Sun Valley Harvest FLC from July of 1981 to June of 1988 and resided in Calexico. The applicant did not claim to have worked for the affiant or to have resided at the Parlier address. This inconsistency calls into question the affiant's ability to confirm that the applicant

resided in the United States during the requisite period. Because the affidavit contradicts the applicant's claim, it has no probative value.

- An affidavit, dated November 30, 2005, from [redacted] in which he states that he met the applicant in the Calexico area "on or around November 1981 through April 1982." He further states that, although the applicant was seeking employment at that time, he was unable to hire him because the applicant did not have a legal work permit. Here, it is not clear where or when the affiant met the applicant. The affiant does not indicate that the applicant was residing in the United States when they met or at any time thereafter. The affidavit therefore has no weight as evidence of the applicant's residence in the United States during the requisite period.

In the instant case, for the reasons noted above, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial.

The contradictions noted above and the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract 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 inconsistencies in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish by a preponderance of the evidence continuous residence 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.