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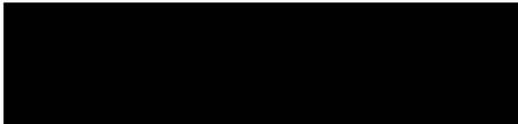
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: Jul 17 2008

MSC-05-221-10707

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 director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that the applicant testified that he first entered the United States in 1985 and that the applicant therefore failed to show by a preponderance of the evidence that he had resided in the United States continuously throughout the requisite period.

On appeal, the applicant disputes the director's finding but has not submitted additional documentation 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) 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).

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. Cardoza-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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 9, 2005. The information contained in the I-687 application conflicts with other evidence in the record including witness affidavits. The information contained in the I-687 application also conflicts with information provided by the applicant in an I-687 application that he submitted in 1990.

Part #30 of the Form I-687 application asked applicants to list all residences in the United States since first entry. The first address listed by the applicant was [REDACTED] in Houston, TX for the period from July 1980 until July 1982. This is also what the applicant listed on his previously filed I-687 application. However, the record contains an affidavit from [REDACTED] the applicant’s brother, which states that the applicant lived at [REDACTED] from November 1980 until September 1985. The record also contains an affidavit from [REDACTED] and [REDACTED] also the applicant’s brothers, which states that the applicant lived with them at [REDACTED] from December 1981 until September 1985. This is a material inconsistency which detracts from the credibility of the applicant’s claim.

The applicant has listed additional addresses on the I-687 application as follows:

- July 1982 – May 1985: [REDACTED] Houston, TX
- August 1986 – April 1989: [REDACTED] Los Angeles, CA
- April 1989 – November 1989: [REDACTED], Los Angeles, CA

There is a significant period, from May 1985 until August 1986, for which the applicant has not provided an address. Further, the information provided conflicts with the information provided

on the I-687 application submitted in 1990. In that earlier I-687 application, the applicant listed his residences as follows:

- July 1982 – May 1985: [REDACTED] Houston, TX
- May 1985 – August 1986: [REDACTED] Los Angeles, CA
- August 1986 – April 1989: The applicant wrote that he did not recall the address for this time period.

The dates of residence for the [REDACTED] differ significantly between the two applications, and the applicant did not list the [REDACTED] address on the previously submitted I-687 application. These are material inconsistencies which detract from the credibility of the applicant's claims.

At part #33 of the I-687 application, applicants were asked to list their employment in the United States since January 1, 1982. Among the employment listed by the applicant was [REDACTED] from May 1983 to November 1983. This was also listed by the applicant on his previously submitted I-687 application. In the previously submitted I-687 application, the applicant noted that [REDACTED] was located in Florida. The record also contains a letter written by the applicant in which he states that he worked in Florida. However, the applicant has not listed a residence in Florida during this time period.

In addition, at part #33 of his I-687 application, the applicant has listed [REDACTED] as his employer for the period May 1985 to 1986. On the previously submitted I-687 application the applicant listed [REDACTED] as his employer from May 1985 until "Present." As the application was submitted in September 1990, this means that the applicant was employed by [REDACTED] at least until 1990. The record also contains a letter dated March 27, 1990 and signed by [REDACTED] stating that the applicant had been employed by Guerrero Mexican Food Products from May 1985 until "present." These are material inconsistencies which detract from the credibility of the applicant's claims.

The applicant submitted the following affidavits and statements in support of his application:

- Affidavit of [REDACTED] signed and notarized on November 2, 1990. The affiant states that the applicant was working for her in 1987 and was still working for him in 1990. As noted above, this conflicts with the information provided by the applicant on his I-687 application, where he indicated that he was employed by [REDACTED] from May 1985 until 1986. This is a material inconsistency which detracts from the credibility of the applicant's claims. Further, the affidavit lacks details of the affiant's relationship with the applicant such as how the affiant dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Letter signed by [REDACTED], president of Guerrero Mexican Food Products. The letter is dated March 27, 1990 and states that the applicant worked for Guerrero Mexican Food Products from May 1985 until “present.” As noted above, this conflicts with the information provided by the applicant on his I-687 application. Further, the letter does not comply with the regulatory requirements for past employment records. 8 C.F.R. § 245a.2(d)(3)(i). This letter therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on March 27, 1990. The affiant states that he is the applicant’s brother, and that he knows that the applicant has resided in the United States since 1980. The affiant lists addresses for the applicant but, as noted above, the information provided by the affiant conflicts with information provided by the applicant in his I-687 application. Specifically, the affiant listed the applicant’s address as [REDACTED] for the period from November 1980 until September 1985. However, the applicant listed this as his address from July 1980 until July 1982. Further, the affiant listed the applicant’s address as [REDACTED] in Los Angeles, CA from September 1984 until September 1985 and listed the applicant’s address as [REDACTED] in Los Angeles, CA from October 1987 until December 1987. The applicant does not list either of these addresses on his I-687 application. This calls into question whether the affiant has personal knowledge of the applicant’s residence during the requisite period. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] and [REDACTED] signed and notarized on January 2, 1990. The affiants state that the applicant lived with them at [REDACTED] from December 1981 until September 1985. As noted above, this conflicts with the information provided by the applicant on his I-687 application. This affidavit therefore has minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavit of [REDACTED] and [REDACTED]. The affiants state that the applicant was in Poblado de Telixtac, Mexico from June 10, 1987 until July 15, 1987. The affiants do not claim to have knowledge of the applicant’s residence in the United States during the requisite period. Therefore, the affidavit is not probative of the applicant’s claim of residence during the requisite period.
- Statement of [REDACTED] signed and dated March 27, 2005. The declarant states that he knows that the applicant was in the United States prior to January 1982 because “we were cousins and we used to work together.” The declarant does not provide any details that would lend credibility to his statement such as where the applicant lived or worked. Further, the declarant indicates that he was living in Mexico prior to January 1982 and, at some point prior to May 1988, moved to Los Angeles, CA. Thus it is not clear that the declarant has personal knowledge of the applicant’s residence during the

requisite period. This statement therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Statement of [REDACTED] signed and dated March 28, 2005. The declarant states that he met the applicant in 1985 when they worked together. This statement lacks details of the declarant's relationship with the applicant such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This statement therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED] signed and dated March 29, 2005. The declarant states that he met the applicant in 1980 at work and states "[w]hen [REDACTED] came to the United States I lived in Los Angeles, CA 90023." However, the applicant has stated that he lived and worked in Houston in 1980. Further the statement lacks details of the declarant's relationship with the applicant such as how the declarant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. This statement therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED] signed and dated March 27, 2005. The declarant does not indicate 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. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims.
- Letter from Rev. [REDACTED], Pastor of Our Lady Queen of Angels church. The letter, dated March 13, 1990, states that the applicant had been a member of the parish since 1985 and provides the applicant's address at the time the letter was written. The letter fails to comply with the regulatory requirements for attestations by churches in that it does not establish how the author knows the applicant, does not establish the origin of the information being attested to and does not state the address where the applicant resided during the membership period. 8 C.F.R. §245a.2(d)(3)(iv). This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] dated February 26, 1990. The affidavit states that the applicant worked for Sambo's Restaurant in Houston, TX from 1977 until 1982. This conflicts with the information provided by the applicant on his I-687 application where he lists his employment with Sambo's Restaurant from September 1980 until September 1982. Further, the affiant does not indicate his relationship with the applicant (employer, co-worker, etc.) and does not explain the basis of his knowledge of the applicant's employment. This affidavit therefore has minimal weight as evidence of the applicant's residence and/or employment during the requisite period.

- Copies of envelopes purportedly sent by the applicant from Houston, Texas to his wife in Mexico. These envelopes bear postmarks of August 2, 1985, August 19, 1985, August 28, 1985 and September 4, 1985.

The record also contains several pay stubs from Sambo's Restaurant, one from Jojo's Restaurant and one from Guerrero Mexican Food Products, Inc., as well as a 1986 W-2 Wage and Tax Statement from Guerrero Mexican Food Products. The pay stubs from Sambo's Restaurant are from October 1979, November 1979, February 1980, May 1980, June 1980, July 1980, October 1980 and November 1981. The pay stubs do not bear the applicant's name and, as noted above, on the I-687 application the applicant listed September 1980 as the start of his employment at Sambo's Restaurant. The pay stub from Jojo's Restaurant is from 1981. This conflicts with the I-687 application where the applicant listed his dates of employment with Jojo's Restaurant as September 1982 to March 1983. The pay stub from Guerrero Mexican Food Products is from April 1987. This conflicts with the I-687 application where the applicant listed his dates of employment with [REDACTED], President of Guerrero Mexican Food Products as May 1985 to 1986.

As noted by the director, the applicant previously testified before an immigration officer that he first entered the United States in May 1985. The applicant has not explained this conflict between his earlier testimony and the information provided on his I-687 application.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting 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 contradictory information in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.