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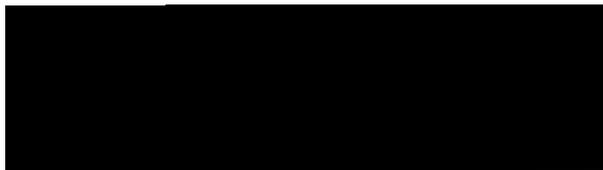
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: MSC 06 098 22396

Office: PORTLAND

Date: JUN 18 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, Portland, and is now before the Administrative Appeals Office 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 addressed the single affidavit submitted in support of the applicant's claim was insufficient. 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.¹

On appeal, the applicant disputes the director's finding regarding the deficient affidavit and reasserts that he has lived in the United States since prior to January 1, 1982.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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).

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

¹ According to a Form I-213, Record of Deportable Alien, which is included in the applicant's record of proceeding, the applicant was arrested for assault with a deadly weapon in March 1990 in Clark County

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.* 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 furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. In the present matter, the applicant has failed to meet this burden. The record shows that the only documentation provided initially in support of the application consisted of the applicant's marriage certificate and its English language translation.

Accordingly, on March 29, 2006, the director issued a notice of intent to deny, informing the applicant that he failed to submit sufficient documentation to support the claim that he resided continuously in the United States for the prescribed statutory time period. In response, the applicant provided an affidavit dated March 28, 2006 from [REDACTED], who claimed that he knew the applicant because he used to work with the applicant's father. The affiant also provided the address where the applicant was allegedly residing from May 3, 1980 until April 3, 1984. However, the affiant provided no information specifically related to the applicant and the applicant's alleged residence in the United States during the time period when the affiant purportedly worked with the applicant's father. Furthermore, the address provided by the affiant cannot be verified, as the applicant only listed his residential addresses going back to 1995. Thus, the applicant failed to provide any information about the place(s) where he purportedly resided during the statutory period. As such, this affidavit will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period. Although the applicant also provided his father's pay stub dated October 16, 1984 as well as his father's W-2 wage and tax statement for 1987, these documents only establish the applicant's father's employment in the United States during certain portions of the statutory period; they do not, however, establish that the applicant himself was present in the United States during those same time periods. As such, the employment documents belonging to the applicant's father will be afforded no evidentiary weight.

Noting the lack of probative value of the affidavit used to support the applicant's claimed residence during the statutory period, the director issued a decision dated September 27, 2006 denying the application.

On appeal, the applicant asserts that _____ knew him as evidenced by the fact that he provided the address where the applicant purportedly resided from 1980 to 1984. However, as stated above, the lack of detailed information regarding the events and/or circumstances of the applicant's residence in the United States significantly detracted from the affidavit's probative value. Furthermore, even if the affidavit did not lack probative value, _____ only addressed a portion of the statutory time period and provided no statements indicating that he knew the applicant beyond April 1984. The only documentation that addresses portions of the remainder of the statutory period includes the pay stub and W-2 statement both of which belonged to the applicant's father.

Lastly, the AAO notes at least one significant discrepancy between the applicant's sworn statement, given on July 25, 2006, and No. 32 of the Form I-687, which instructs each applicant to list his/her absences from the United States. While in the sworn statement the applicant disclosed three separate absences in 1984, 1985, and 1986, respectively, he disclosed no absences at all in his Form I-687 application. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the inconsistency concerning the applicant's absences from the United States during the statutory period remains unresolved.

In summary, the applicant has not provided any contemporaneous evidence concerning his own residence in the United States during the statutory period, and has submitted a single deficient attestation, which, at best, accounted for only a portion of the statutory time 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. As stated earlier in this decision, 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). Given the applicant's contradictory statements regarding his absences from the United States during the statutory time period and his 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 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-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Lastly, according to a Form I-213, Record of Deportable Alien, which is included in the applicant's record of proceeding, the applicant was arrested for assault with a deadly weapon in March 1990 in Clark County. While it appears that the applicant was convicted of a misdemeanor charge of assault in the fourth degree, it must be noted that in No. 37 of the Form I-687, the applicant claimed that he had never been charged or convicted of an offense. Thus, despite the fact that this conviction does not render the applicant statutorily ineligible for temporary resident status, the applicant's credibility further comes into

question in light of this inconsistency. As previously stated, the applicant is expected to resolve inconsistencies with adequate documentary evidence, which in the present matter has not been presented. *Matter of Ho*, 19 I&N Dec. 591-92.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.