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U.S. Citizenship
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FILE:

MSC 05 075 21255

Office: LOS ANGELES

Date:

MAR 05 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:

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. In denying the application, the director noted that the applicant had previously sworn under oath that he first resided in the United States in July 1982 during a legalization interview with an immigration officer held on October 24, 1995. 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, counsel for the applicant states that the applicant "firmly asserts that he indeed entered the U.S. in December of 1981." Counsel notes that the applicant was assisted by a "notario" who prepared his 1994 legalization application and he believes that any errors on the previous application were a result of errors made by the notario and the applicant's inability to read or write English at that time. Counsel submits a brief in support of the appeal.

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).

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 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 December 15, 2004. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 reported his first address in the United States to be at [REDACTED] in Long Beach, California from 1981 until 1984. He indicated that he resided at [REDACTED] in Wilmington, California from 1984 until 1993. The applicant indicated at part #33 of the Form I-687 that he was employed by [REDACTED] Mexican Bakery in Long Beach California from January 1982 until September 1988. The applicant’s residence information indicates that he continuously resided in the United States during the requisite period; however, the applicant has failed to corroborate this testimony with credible and probative evidence.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided 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. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted the following documents in support of the instant application:

- A questionnaire completed by [REDACTED], which is not signed, notarized or dated. He states that he met the applicant in 1981 "in my work," and that he himself worked as a laborer for "Home Savings" in Torrance, California when he met the applicant. He indicated "I see [the applicant] at my work." [REDACTED] provided a copy of his California senior citizen identification card as proof of his identity.
- A questionnaire completed by [REDACTED], which is not signed, notarized or dated. [REDACTED] states that he met the applicant in 1981 through "my work & friends." He states that he was working as manager of "[REDACTED]" and living in San Pedro, California when he met the applicant. [REDACTED] indicates that he knows the applicant came to the United States before 1982 "because at first he came to my work place to ask for work and then he would go to purchase food, then we became friends and he told me when he came to the U.S." He stated that the applicant came often to his work place and introduced him to his brothers. [REDACTED] stated that he and the applicant went out to eat and that sometimes the applicant invited him to family reunions. [REDACTED] provided a copy of his California driver license as proof of his identity.
- A questionnaire completed by [REDACTED] which is not signed, notarized or dated. [REDACTED] stated that he met the applicant in 1981 "at work" and indicated that he worked for "[REDACTED]" in Redondo Beach at the time. He stated that he know the applicant "when he started working with me. And I also knew him because I just to see him in reunions." [REDACTED] provided a copy of his California identification card as proof of his identity.
- A questionnaire completed by [REDACTED], which is not signed, notarized or dated. [REDACTED] states that he met the applicant in 1980 or 1981 at his work and that the applicant was "like a client." He indicates that he knows the applicant came to the United States before 1982 because he was "asking for work." He states that he was the manager of Shamrock Seafood in Wilmington, California at the time, and that he saw the applicant every day because he lived near [REDACTED]'s work. [REDACTED] provided a copy of a California driver license issued in April 1984 as proof of his identity and residence in the United States during the requisite period.

A questionnaire completed by [REDACTED], which is not signed, notarized or dated. Mr. [REDACTED] states that he met the applicant in 1981 "in my work" and that he knows the applicant came to the U.S. before 1982 because he saw him "before 1982 at street." [REDACTED] indicated that he was employed by Atlas Lighting in Torrance, California at the time he met the applicant. He indicated that he knew the applicant was living in the United States between 1982 and 1988

because he saw him at a soccer field.
as proof of his identity.

provided a copy of his California driver license

The applicant later submitted additional evidence related to these individuals, including their telephone numbers and evidence that they were residing in the United States during the requisite period. However, all of these unsigned questionnaires are significantly lacking in probative value. The questionnaires fail to provide detailed information regarding how or where the author met the applicant, how they date their acquaintance with him, and the extent of their contact with him during the requisite period. All of these individuals vaguely claim to have met the applicant through "work," but none of them appear to have actually worked with the applicant. They provide no relevant or verifiable testimony, such as in what city the applicant resided during the requisite period or information regarding where the applicant worked, that would lend credibility to the claim that these individuals actually have direct, personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The fact that none of these questionnaires have been signed, dated or notarized further diminishes their probative value.

The applicant also submitted three employment letters; however, the only letter that pertains to the requisite period is not signed. The letter is printed on the letterhead of [REDACTED]'s Mexican Bakery in Long Beach, California and certifies that the applicant worked for the company from January 1982 until September 1988 as a full-time Mexican baker. The letter is dated May 12, 1997, and the word "copy" is handwritten on it. Because this letter is not signed, it has no probative value.

The applicant's administrative record also includes a Form I-687 application signed by the applicant under penalty of perjury on February 14, 1994, along with supporting documenting submitted by the applicant at that time, which included the following:

- An affidavit dated January 28, 1994 from [REDACTED] who stated that he met the applicant in 1988 through a friend, and that he had personal knowledge that the applicant resided at [REDACTED] since that date. Because the affiant does not claim to have any knowledge of the applicant's continuous residence in the United States prior to an unspecified date in 1988 that may or may not fall within the relevant period, his statement has minimal probative value.
- A notarized letter dated December 3, 1993, from the applicant's mother, [REDACTED]. She stated that the applicant resided with her at [REDACTED] in Long Beach, California from 1982 until 1988 and later moved with her to [REDACTED]. She stated that he left the country one time, in December 1984, to get married, and was still living with her as of 1993. She indicated that the applicant contributed to living expenses such as rent, telephone and utilities, but that all receipts were in her name. It is noted that the applicant indicated on his current Form I-687 that he resided at [REDACTED] from 1981 until 1984, thus the information provided by [REDACTED] is inconsistent with the applicant's own testimony. [REDACTED] provided no evidence that she herself was residing at these addresses for the stated periods, although she implied that she had leases, rent receipts, and utilities in her name during the requisite period. Absent evidence that the applicant's mother was actually residing in the United States, her statement has little probative value.

An affidavit dated December 4, 1993 from [REDACTED], who stated that he has personal knowledge that the applicant resided at [REDACTED] in Long Beach, California from 1982 to 1988. He stated that the applicant was his neighbor for a long time, that he resided at [REDACTED] with his mother, and that he was a good friend of the applicant's and visited him often. [REDACTED]'s testimony is inconsistent with the information the applicant provided on his current Form I-687, where he stated that he resided at [REDACTED] from 1981 until 1984. For these reasons, and due to its lack of detail, [REDACTED]'s affidavit can be given minimal weight as corroborating evidence.

- An affidavit dated December 2, 1993 from [REDACTED], he stated that he had personal knowledge that the applicant resided at [REDACTED] in Long Beach, California from 1982 to 1988 and at [REDACTED] in Wilmington, California beginning in 1988. He stated that the applicant had been his neighbor since 1988 and that to the best of his knowledge, the applicant had previously resided in Long Beach since 1982. It is not clear from [REDACTED]'s statement whether he met the applicant prior to 1988, and thus his claim that he had personal knowledge of his residence in the United States prior to that time is not credible. Because the affiant does not appear to have any first-hand knowledge of the applicant's continuous residence in the United States prior to an unspecified date in 1988 that may or may not fall within the relevant period, his statement also has minimal probative value.
- A notarized letter dated November 2, 1993 from [REDACTED], who stated that the applicant was employed by [REDACTED]'s Mexican Bakery in Long Beach, California on a part-time basis as a stockman and maintenance man from January 3, 1982 until September 1, 1988. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary, and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether CIS may have access to those records. This affidavit form-letter 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 employment letter from [REDACTED] does not meet these requirements as it is not on company letterhead, does not identify the address at which the applicant resided during the claimed period of employment, and does not indicate whether the information was taken from official company records. [REDACTED] does not indicate his job title or position within the company or the source of the information to which he is attesting. Therefore, this letter has only limited probative value.

Furthermore, as noted above, the applicant has submitted in support of the instant application a letter dated May 12, 1997 which is identified as a "copy" of a previous letter provided by [REDACTED]. In this letter, the applicant is identified as a "full-time Mexican baker" rather than as a part-time maintenance person. 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).

- A photocopy of the birth certificate for the applicant's daughter, [REDACTED] who was born in Torrance, California on October 29, 1985. This evidence demonstrates that the applicant's spouse was in the United States on October 29, 1985, and likely in the weeks immediately before and after this date, but has no probative value as evidence of the applicant's residence in this country at that time.

Finally, the record contains a sworn statement signed by the applicant on October 24, 1995, at which time he was interviewed in connection with his 1994 legalization application. He stated that he entered the United States for the first time in July 1982.

The director denied the application on June 2, 2006. In denying the application the director determined that the applicant has failed to show by a preponderance of the evidence his residence in the United States during the requisite period. The director noted that when the applicant submitted his application in 1994, he: (1) provided no evidence that he entered the United States prior to January 1, 1982; (2) indicated on his Form I-687 that he first resided in the United States in 1982; (3) swore under oath that he first resided in the United States in July 1982; and (4) signed a written statement in Spanish confirming this date of entry. The director acknowledged that the applicant has now submitted affidavits from individuals who claim to have met him in the United States prior to 1982, but questioned the credibility of such affidavits given the applicant's previous statements and sworn testimony that he entered the United States in 1982. The director concluded that the applicant has failed to meet his burden of proof in the proceeding.

On appeal, counsel for the applicant states that the applicant "firmly asserts that he indeed entered the U.S. in December of 1981." Counsel asserts that the applicant was assisted by a "notario" in 1994, did not review his application, and did not at the time read or write English. She states that the applicant believes that the notary who assisted him "erred in putting a 1982 arrival date." She further asserts that the applicant did not submit affidavits regarding his initial entry date in support of his previous application "because he was not advised to do so." Counsel states that the applicant has reviewed the instant Form I-687 application and concurs that the information contained therein is correct.

Counsel's assertions are not persuasive. While the applicant attempts to attribute "errors" made in his previous application to a "notario" it is noted that there is no remedy available for a applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). The applicant signed the Form I-687 under penalty of perjury and his statements are assumed to be his own. Furthermore, the applicant has not addressed his own previous sworn testimony that he entered the United States for the first time in July 1982. This testimony was given by him under oath in his native language and cannot be attributed to an error on the

part of an unauthorized representative. His claim that he did not previously provide evidence of his entry prior to January 1, 1982 because such evidence was not requested is not persuasive. For example, if the applicant did in fact reside with his mother at [REDACTED] in Long Beach, California upon his entry to the United States in 1981, it is unclear why she would have indicated his earliest date of residence at this address to be in 1982.

Given the inconsistencies in the record regarding the date of the applicant's initial entry to the United States, the applicant must provide credible, objective evidence in order to meet his burden of proof. The four unsigned questionnaires from persons claiming to know the applicant since 1981 are insufficient for the reasons stated above. An application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in credibility and probative value.

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. 77, 79-80 (Comm. 1989). 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, this applicant has not provided credible, contemporaneous evidence of residence in the United States relating to requisite period. While he has submitted various questionnaires and affidavits from persons claiming to have known him since that period, they are uniformly lacking in detail and probative value, and, at times, inconsistent with the applicant's own testimony. As such, the applicant cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent 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 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 she 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.

Finally, the record reflects that on March 30, 1986, the applicant was arrested by the Los Angeles Police Department and charged with one count of Grand Theft Property in violation of Section 487 of the California Penal Code. The applicant subsequently pled guilty to the charge of Theft in violation of Section 484 of the California Penal Code in the Municipal Court of Metropolitan Los Angeles (Case Number [REDACTED]) and was sentenced to 24 months probation and 30 days in county jail. The applicant has not provided a court record showing the final disposition of his case.

It is noted that an applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulations provide relevant definitions at 8 C.F.R. § 245a. The applicant's conviction in this case appears to be for a single misdemeanor; however, without the applicant's court record, the applicant's eligibility pursuant to 8 C.F.R. § 245a.2(c)(1) cannot be determined with certainty. The burden is on the applicant to provide affirmative evidence that he is eligible for the benefit sought. For this additional reason, the applicant has not established that he is eligible for status as a temporary resident.

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