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FILE: [REDACTED]
MSC-06-069-13309

Office: LOS ANGELES

Date: MAR 27 2008

IN RE: Applicant: [REDACTED]

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, 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. 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 addresses the inconsistencies in his testimony. The applicant asserts that he has submitted three affidavits as evidence of his residence in the United States since 1981.

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. 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 December 8, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that he first resided in Maywood, California from September 1981 until January 1986 and then he resided in Los Angeles, California from January 1986 until January 1990. At part #32 of the application, where applicants are asked to list all of their absences from the United States, the applicant reported that he was absent in August 1987 for a duration of one month or less. At part #33, where applicants are asked to list their employment in the United States, the applicant showed that he was employed with Jaime Ibarra in Lynwood, California as a mechanic/janitor from 1981 until February 1988. The applicant also showed that he was self employed in Los Angeles, California as a janitor from June 1981 until February 1988. This information indicates that the applicant resided in the United States during the requisite period; however he has failed to corroborate his claim with probative evidence.

The applicant submitted as corroborating evidence voluminous documentation, mostly in the form of tax returns and statements of earnings and deductions. However, none of these documents relate to the requisite period. The only documents the applicant submitted that relate to the requisite period are affidavits from [REDACTED] and [REDACTED]

The affidavits from [REDACTED] and [REDACTED], dated March 27, 2001, are identical. These affidavits provide:

[REDACTED] has been acquainted in the United States since June, 1981 to the present time. At this time he lived at [REDACTED] [REDACTED] Paramount, California 90712. Now he lives at [REDACTED] [REDACTED] Lynwood, CA 90262. That I am able to determine the date of the beginning of my acquaintance with the applicant in the United State [sic]. That he is a good, conscientious person, and I have knowledge of information that he is a person of good moral character.

These affidavits contain several apparent deficiencies. The affidavits fail to provide any details on the beginning of the affiant's acquaintance with the applicant. Relevant details would include how and where the affiant first met the applicant. The affidavits also fail to provide any details on the affiant's relationship with the applicant during the requisite period. Relevant details would include the type and frequency of contact the affiant had with the applicant during the requisite period. The affiants claim that they have information that the applicant is a person of good moral character. Had the affiants elaborated on this information, their statements would have carried more weight. Lastly, the affiants have provided an address for the applicant, [REDACTED] Paramount, California, that is not listed on his Form I-687. Based on these deficiencies, the affidavits do not carry any weight as credible and probative evidence.

The affidavit from [REDACTED] dated April 3, 2001, is nearly identical to the previous affidavits. This affidavit provides:

[REDACTED] has been acquainted in the United States since June, 1981 to the present time. At this time he lived in my house at [REDACTED] [REDACTED] Paramount, Ca [sic] 90723, for two years and six months. Now he lives at [REDACTED] [REDACTED] Lynwood, Ca [sic] 90262. That I am able to determine the date of the beginning of my acquaintance with the applicant in the United State [sic]. That he is a good, conscientious person, and I have knowledge of information that he is a person of good moral character.

This affidavit also contains several apparent deficiencies. The affiant claims that she has been acquainted with the applicant in the United States since June 1981 to present time. She states that the applicant lived at her residence in Paramount, California for two years and six months. However, the applicant's Form I-687 does not list any residences in Paramount, California. Additionally, the affiant fails to provide any details on her relationship with the applicant during the requisite period. As stated, relevant details would include the type and frequency of contact

the affiant had with the applicant during the requisite period. Based on these deficiencies, this affidavit does not carry any weight as credible and probative evidence.

The applicant submitted with his application several documents written in Spanish without accompanying English translations of these documents. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Therefore, these documents are not reliable and probative evidence of the applicant's residence in the United States during the requisite period.

The applicant's record indicates that he filed a Form I-485, Application for Status as a Permanent Resident, pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000. The applicant submitted with his instant application copies of his Form I-485 and Form G-325, Biographic Information Sheet. The applicant indicated on his G-325 his date and location of marriage as December 30, 1986 in Mexico. This information is inconsistent with the applicant's Form I-687, which provides that his only absence from the United States since 1981 was a trip to Mexico in August 1987. This inconsistency draws into question the applicant's claim of continuous residence in the United States during the requisite period.

The applicant submitted with his application a copy of an interview notice from the Immigration and Naturalization Service (the Service), dated July 28, 1995. This interview notice requests the applicant to appear at the Legalization Office in Los Angeles to submit his application for amnesty as a *CSS vs. Reno* or *LULAC vs. INS* class member. The applicant provided a copy of an older version of a Form I-687 application, which he presumably submitted to the Service for a determination of his class membership in either *CSS vs. Reno* or *LULAC vs. INS*. Since these documents only relate to the applicant's class membership, they are not relevant to this proceeding. At issue is the applicant's continuous residence in the United States during the requisite period.

In denying the application the director determined that the applicant failed to establish his continuous unlawful residence in the United States during the requisite period. The director found that the applicant testified he first met [REDACTED] in December 1982, which is inconsistent with her affidavit. The director noted that the applicant's only other evidence consisted of two affidavits attesting to his residence in the United States since before 1982. The director found that Citizenship and Immigration Services does not have a record of the issuance of his July 28, 1995 interview notice from the Service.

On appeal, the applicant asserts that his misstatements regarding dates from twenty-four years ago is within the framework of human behavior and the frailties of human memory. The applicant submits identity documents from [REDACTED] and [REDACTED] [REDACTED] a, as evidence of their identity. The applicant also submits copies of two deposited checks. One check is from [REDACTED], dated March 15, 1983, showing her presence in the United States

on this date. The copy of the front of the other check is illegible. Lastly, the applicant submits a copy of another interview notice from the Service, dated December 9, 1995, with its accompanying mail envelope. This interview notice requests the applicant to appear at the Legalization Office in Los Angeles on April 4, 1996 to submit his application for amnesty as a *CSS vs. Reno* or *LULAC vs. INS* class member.

The documents submitted on appeal fail to overcome the director's finding that the applicant has not established his continuous residence in the United States during the requisite period. The interview notice from the Legalization Office in Los Angeles does not relate to the applicant's residence in the United States during the requisite period, therefore, it is not relevant to this proceeding. The only evidence of the applicant's residence in the United States during the requisite period is affidavits that contain inconsistencies and lack considerable detail. These affidavits when viewed either alone or within the totality of the evidence are of no value as probative evidence. On appeal the applicant submitted the affiants' identity documents and physical presence documents. However, these documents do not remedy the lack of detail and inconsistencies noted in these affidavits. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to remedy these affidavits and/or provide any additional evidence to establish his continuous residence in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistency noted in the record, seriously detract from the credibility of his 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 inconsistency in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided 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.