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U.S. Citizenship
and Immigration
Services

LI

FILE:

MSC 06-063-11630

Office: LOS ANGELES

Date: NOV 19 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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 Director, Los Angeles, 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 denied the application after determining 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 noted that the applicant's claimed departure dates from the United States, that he testified to under oath during his immigration interview with immigration officers, were inconsistent with what he indicated on his Form I-687 application. The director also noted that the applicant's absence from the United States during a single trip exceeded the 45 days allowed by statute. The director further noted the contrast in the applicant's statement during his immigration interview concerning his employment in Bakersfield, California from 1981 to 1984, and his statement on his Form I-687 application where he indicated that he was employed as a construction worker for Commercial Paving located in Los Angeles, California, from January of 1982 to December of 1988. The director also noted that the affidavits submitted on behalf of the applicant failed to meet the eligibility requirements for affidavits and therefore, were not credible. The director therefore concluded that the applicant had not resided continuously in the United States 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 that he meets all the requirements for the immigration benefit sought. The applicant also asserts that the immigration officer who was present during his interview is fabricating the facts to deny his application. The applicant asserts that his absences from the United States were brief, casual, and innocent and were not in excess of 45 days per trip. The applicant further asserts that he worked in Bakersfield, California from 1981 to 1984 and that he came home to live at his residence in Los Angeles, California on the weekends. The applicant does not submit any evidence on appeal. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 2, 2005. On his Form I-687 application at part #30 where the applicant was asked to list his places of residence he indicated that he resided at [REDACTED], Los Angeles, California from January 12, 1981 to November 25, 1996. He also indicated at part 33 of his I-687 application that he was employed by Commercial Paving Company of Los Angeles, California as a construction worker from January 20, 1981 to December 20, 1988.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestations:

- A declaration from [REDACTED] in which he stated that he has known the applicant since June of 1981 when the applicant applied for a job at his place of employment. The declarant further stated that the applicant didn't get the job because he was a kid, and that they have become close friends since then.
- A declaration from [REDACTED] in which he stated that he has known the applicant since 1981 when he met him at a party, and that the applicant told him that he had come from Mexico a couple of months before they met.
- A declaration from [REDACTED] in which he stated that he has known the applicant since 1981 when they met at a restaurant where the declarant sang and that the applicant liked the way he sang. The declarant also stated that he and the applicant became good friends and that the applicant hires him to perform during special occasions.
- A declaration from [REDACTED] in which he stated that he has known the applicant since 1981 when the applicant told him how he came to the United States. The declarant

also stated that although he now lives in Iowa, he still keeps in touch with the applicant by phone.

- A declaration from [REDACTED] in which he stated that he has known the applicant since 1982 and that the applicant told him that he had come to the United States from Mexico a year before they met. The declarant also stated that he hired the applicant to do work in his house and that they keep in touch with each other.
- A declaration from [REDACTED] in which he stated that he has known the applicant since December of 1981 when they met at a Christmas party and that the applicant told him that he had arrived in the United States a few months before they met. The declarant also stated that they have kept in touch with each other as friends.
- A declaration from [REDACTED] in which she stated that she has known the applicant since October of 1982 and that the applicant told her how he came to be in the United States. The declarant also stated that she has lived in California since 1970 and that applicant called her to tell her that he had arrived in the United States.
- A declaration from [REDACTED] in which she stated that she has known the applicant since December of 1981 and that the applicant told her when they met that he had arrived in the United States from Mexico a few months before. The declarant also stated that they have become friends and that they meet during holidays.

A declaration from [REDACTED] in which she stated that she has known the applicant since April 20, 1981 when she employed him to fix things in her house. The declarant also stated that they have become friends and that she invites him to eat and to attend church services.

- A declaration from [REDACTED] in which he stated that he has known the applicant since 1981 and that once during conversation, the applicant told him that he had just arrived in the United States from Mexico. The declarant also stated that they became friends and that they played soccer together a lot.
- A declaration from [REDACTED] in which he stated that he has known the applicant since 1981 when he met him playing soccer at a party. He also stated that they have become friends and that they go out together.
- A declaration from [REDACTED] in which she stated that she has known the applicant since July of 1981 and that their families were mutual friends. She also stated that she heard family members talking about how the applicant had recently arrived in the United States from Mexico, and that the applicant confirmed their statements as truth.

Here, the declarants fail to demonstrate that their statements concerning the applicant's entry into the United States were based upon first hand knowledge of his whereabouts or circumstances during the requisite period. It is noted by the AAO that although the applicant claims to have arrived in the United States as a twelve year old boy, the declarants failed to identify any parent or guardian who was responsible for the applicant's survival in the United States during the requisite period. The declarants also fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. Because the declarations are lacking in detail as to the applicant's whereabouts and circumstances, they can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted did not meet the statutory criteria for affidavits, that the applicant's absence from the United States exceeded 45 days during any given trip, and that the applicant had failed to explain the inconsistencies in the record with regard to his employment history. The director also noted that the applicant had failed to provide the preponderance of evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status, that his stays outside the United States were brief, casual, and innocent, and that he worked in Bakersfield, California and lived in Los Angeles, California, where he would return to on weekends. The applicant does not submit any evidence on appeal.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The attestations, while providing some evidence of the applicant's presence in the United States, are insufficient to establish his continuous unlawful residence in the country throughout the requisite period. The applicant fails to address the inconsistencies found in the record regarding his claimed employment in Los Angeles, California and Bakersfield, California during the same time period from 1981 to 1984. Further, at his interview he testified that he was absent 2 times from the United States, the last time in 1984 for one month and again in 1985 for 2 months, and in his Form I-687 he indicated that he had left the United States 6 times during the requisite period. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is further noted by the AAO that although the applicant indicated at part #32 of his I-687 application that he was absent from the United States from August of 1987 to September of 1987, he submitted a copy of his child's Mexican birth certificate which shows that the child was born in October of 1987; that birth certificate indicates that the applicant was domiciled in Mexico. The applicant has failed to list his absence from the United States in order to have fathered that child.

The absence of sufficiently detailed 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 inconsistent statements regarding his employment and absences from the United States, and his reliance upon declarations with little 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.