



U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC-05-039-10495

Office: LOS ANGELES

Date:

NOV 28 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:

[REDACTED]

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.

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. 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 stated that there were discrepancies in the record regarding the applicant's absences from the United States during the requisite period, specifically noting that the applicant had previously stated that he resided in Morales, Mexico from February 1986 until December 1988. The director stated that the evidence in the record did not allow the applicant to prove that he resided continuously in the United States for the duration of the requisite period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he did not reside in Morales, Mexico for the period in question. He asserts that he has satisfied his burden of proof and that the director erred in her decision.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submitted in support of his claim that he arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant’s landlord, friends and family, an affidavit of employment, the applicant’s marriage certificate, tax documents pertaining to the requisite period, pay stubs and a receipt. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] [REDACTED] each state that the affiants know that the applicant resided in the United States for part or all of the requisite period.

Affiants [REDACTED] state that they first met the applicant in 1981, and affiant [REDACTED] states that he first met the applicant in 1985. [REDACTED]

states that since meeting the applicant in May 1981 he has seen him every Sunday in church and affiant [REDACTED] states that he met the applicant at a Christmas Party in 1981 and has seen the applicant on a "regular basis" since that time. However, [REDACTED] only states that he met the applicant in June 1981 and does not state the frequency with which he saw the applicant after that time during the requisite period. Affiant [REDACTED] states that he and the applicant attended the same church from August 1985 to the present. However, only affiant [REDACTED] states the frequency with which he saw the applicant since they first met. None of the affiants state whether there were periods of time during the requisite period when they did not see the applicant during the requisite period.

Affiant [REDACTED] states that the applicant rented property from him from May 1981 to June 1986. Though he states that the applicant paid his rent on time, he fails to state how he knows when the applicant's residence at his property began or whether he consulted records to determine the applicant's start date as his tenant.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The employment affidavit submitted by the applicant's alleged former employer states that [REDACTED] the owner of M.A.R.S. Inter-Tech Industries, employed the applicant from May 1986 until August 1987 and then again from 1990 until the date of his affidavit, which he signed in July of 1993.

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 USCIS 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.

In this case, the applicant's employer failed to provide the applicant's address during his period of employment and he further failed to state how he was able to determine the dates associated with the applicant's employment or whether these dates were taken from official records. Because this employment affidavit is significantly lacking with regards to the regulatory requirements, it can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has submitted Forms 1040 for the years 1987 and 1988 that indicate that he was employed in the United States during those years and photocopies of mail sent to the applicant in December 1987. Though these documents appear to corroborate the applicant's claimed residence in the United States beginning in 1987, they do not offer proof of his residence in the United States before that time.

Though the applicant has also submitted pay stubs pertaining to wages earned in 1987, these pay stubs do not indicate who they were issued to. Therefore, they cannot be clearly associated with the applicant and carry no weight as evidence of his residence in the United States during the requisite period.

The record contains a Form G-325A, which the applicant submitted with another application and executed under penalty of perjury. This Form G-325A indicates that the applicant resided on [REDACTED] in Morelos, Mexico from February 1986 to December 1988. This information is contradictory to the statements made by the applicant at his legalization interview, on the Form I-687, and to statements made by the applicant's witnesses in sworn affidavits regarding the applicant's residence in 1986 and 1987. This also calls into question the Forms 1040 for the years 1987 and 1988 submitted by the applicant and the statement from [REDACTED] who claims that the applicant resided in a residence he owned until June of 1986.

Further, because the applicant has stated that he was absent from the United States from 1986 until December 1988, doubt is cast on the employment letter from M.A.R.S. Inter-Tech Industries regarding the applicant's dates of employment at that company. These discrepancies cast doubt on whether the applicant has fully disclosed his absences from the United States during the requisite period to CIS and on the credibility of documents he has submitted in support of his application. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains the applicant's marriage certificate, which indicates that he was married in Mexico on May 18, 1984. Though this indicates that the applicant was absent from the United

States, this absence is not consistent with an absence noted on the applicant's Form I-687, where he indicates that his only absence from the United States was from August to September of 1987.

These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra.*

Though the director identified the discrepancy regarding the applicant's statement on his Form G-325A and on his Form I-687 application and in his employment letter from M.A.R.S. Inter-Tech, on appeal the applicant rebutted this finding by stating that USCIS misstated his testimony regarding his absences from the United States. However, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.