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U.S. Citizenship  
and Immigration  
Services

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411

FILE: [REDACTED]  
MSC 05 278 12217

Office: LAS VEGAS

Date: OCT 14 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.

  
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 Director, Las Vegas. The matter 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 (the 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 during the requisite period. On appeal, counsel reiterated the applicant's claim of continuous residence.

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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 applicant 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 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.

On the Form I-687 application, which the applicant signed on June 5, 2005, the applicant stated that he was born on January 1, 1967. At his February 22, 2006 legalization interview, the applicant amended his birth date to January 8, 1967.

The applicant was required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant listed employment from 1980 to 1990 as a field worker for farm labor contractor [REDACTED] of [REDACTED] in Calexico, California. In parentheses, the applicant stated, “My father worker [sic] there.” Whether the applicant is stating that both he and his father worked for [REDACTED], or only that his father did, is unclear. This office notes that the applicant turned 13 years old during 1980.

At his legalization interview, the applicant changed a later portion of his employment history. On the application, he stated that he was self-employed in construction from 2000 to 2004. At his interview, the applicant stated that he was foreman of a paving crew from September 2000 through February 22, 2006, the date of the interview. That employment occurred after the end of the period of requisite residence and is not directly relevant to the applicant’s eligibility. That the applicant changed his employment history between filing the instant application and attending his legalization interview, however, casts doubt on the reliability of the applicant’s assertions.

On the application, the applicant was also required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that, from 1980 to 1990 he lived at [REDACTED] in Calexico, California. In parentheses the applicant added, “My father lived there.” Whether the applicant is stating that he lived at that address, or merely that his father did, is unclear.

At his legalization interview, the applicant amended his residential history. The applicant indicated (1) that he lived in Riverside, California, at an unidentified address, from an unidentified date during 1981 to an unidentified date during 1985, (2) that he lived at an unidentified address on [REDACTED] in Whittier, California from an unidentified date in 1985 to an unidentified date in 1988, and (3) that he lived at an unidentified address in Los Angeles, California, from an unidentified date in 1988 to an unidentified date in 1990.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that he resided in Mexico from 1991 to 1999, and listed no other absences in the United States. At his legalization interview, the applicant disclaimed that absence, stating that he had not been absent from the United States since January 1, 1982. .

The pertinent evidence in the record is described below.

- The record contains an affidavit, dated February 11, 2006, from [REDACTED], of Long Beach, California. The affiant stated that he has known the applicant since 1982, and that he and the applicant worked at Ideal of California in Los Angeles from 1982 to 1995.

This office notes that the applicant did not claim, on the Form I-687 as initially submitted or in his amended claim at his legalization interview, to have worked for Ideal of California. Because it contains information that conflicts with information the applicant has provided, the affidavit of [REDACTED] will be accorded very little weight.

Further, 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, and the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). That the applicant submitted evidence that conflicts with his assertions decreases the credibility of all of the applicant's evidence and casts additional doubt on the reliability of all of his assertions.

- The record contains an affidavit, dated December 9, 2005, from [REDACTED] of Los Angeles. Ms. [REDACTED] stated that she has known the applicant for more than 20 years, since 1982. Both the "20" and the "1982" in that typewritten affidavit appear to have been altered with whiteout and a pen.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated September 18, 2006, the director stated that the applicant failed to submit evidence to demonstrate his entry into the United States prior to

January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit evidence.

The applicant did not respond to that notice. In the Notice of Decision, dated January 4, 2007, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel reiterated the applicant's claim of continuous residence during the requisite period, but provided no additional evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Neither of the applicant's affidavits, the only relevant evidence submitted, attests that the applicant was in the United States before January 1, 1982. Even if they were found credible, they would not support the assertion that the applicant was in the United States before 1982.

Further, the applicant has changed his claim to eligibility in many respects since he submitted his application, thus casting doubt on the veracity of his assertions. Of the two items of evidence he submitted, one conflicts with information the applicant provided and is therefore of very little evidentiary value. The evidentiary value of the remaining affidavit is also damaged by the conflicts and contradictions in the record.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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