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U.S. Citizenship  
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41



FILE: [REDACTED]  
MSC-06-103-11601

Office: LOS ANGELES

Date: SEP 05 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. 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 resided continuously in the United States for the duration of the requisite period. He submits additional evidence in support of his application.

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) 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on January 11, 2006. 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 indicated his addresses in the United States during the requisite period were:** [REDACTED] in Sun Valley, California from February 1980 to March 1985; and [REDACTED] in Sun Valley from March 1985 to February 1990. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during or subsequent to the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed by Fabri-Graphic, Inc. in Sun Valley, California from March 1980 to May 1989.

Also in the record are notes from the applicant’s interview with a CIS officer on November 22, 2006. The record indicates that the applicant testified that he had never been arrested. He further stated that he first entered the United States in either January or February 1980 and then resided with his brother [REDACTED] in Sun Valley for eight years. He stated that he was employed as a day worker during the requisite period and that his brother also supported him. It is noted that the applicant did not indicate that he was a day worker on his Form I-687. He stated

that he was absent once during the requisite period, when he went to see his sick uncle in January 1988 and once subsequent to the requisite period in 1989. It is noted that the applicant did not state that he was ever absent from the United States on his Form I-687. He stated that he attempted to apply for legalization in 1989 but was rejected at that time. Though not in the interview notes themselves, the record indicates that at the time of this interview, the applicant asserted that he met affiant [REDACTED] in the United States and that they later became coworkers at Fabri-Graphics.

The record reflects that on or about December 14, 1992, that applicant was arrested by the Los Angeles Police Department of the North Hollywood Area and subsequently charged with a violation of the California Penal Code § 484(a), *theft of property*, a misdemeanor. On January 4, 1993, a second charge was added for a violation of California Penal Code § 490.1(a) *petty theft, where the value of the money, labor, real or personal property taken is of a value which does not exceed fifty dollars (\$50)*, a misdemeanor or an infraction. On January 4, 1993 the charge against the applicant in violation of California Penal Code § 490.1(a) *petty theft, where the value of the money, labor, real or personal property taken is of a value which does not exceed fifty dollars (\$50)* was dismissed. On that date the applicant was convicted of the misdemeanor offense in violation of California Penal Code § 484(A), *theft of property*, a misdemeanor in the Van Nuys, California Courthouse, Division 101. (Case No. [REDACTED]) This single misdemeanor conviction does not render the applicant ineligible for temporary resident status pursuant to 8 C.F.R. § 254a.2(c)(1). However, it is noted that at the time of the applicant's interview with a CIS officer on November 22, 2006, he testified that he had never been arrested.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant initially failed to submit evidence that he resided in the United States for the requisite period.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on April 3, 2006. In this NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he

(or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted two declarations from [REDACTED], both of which are dated April 12, 2006. The declarant submits a photocopy of his California Driver's License and his Certificate of Naturalization issued to him on July 12, 1989 with his declaration. He further submits a business card and a photocopy of his Social Security Statement, which indicates that he was employed in the United States continuously for the duration of the requisite period as well as his Forms W-2 for 1985, 1986, and 1987, all of which indicate that he worked for Industrial Finishing Company, Inc. and photocopies of some pages of Forms 1040 from the requisite period. The declarant states that he first met the applicant in 1980 when he was introduced to him by a friend. He states that he knows that the applicant first entered the United States before January 1, 1982 because he met him in 1980 and because they both worked for a company named IFCO in 1980. He asserts that "now and then" the applicant would say hello to him during the requisite period. He states that he supervised the applicant for six years when they worked together at Fabri-Graphics, Inc. However, he does not state when they worked together at Fabri-Graphics. Though the declarant states that the applicant worked for IFCO in 1980, the applicant stated on his Form I-687 that he worked for Fabri-Graphics beginning in 1980. He did not indicate that he had ever worked for IFCO. Further, the applicant indicated that he was a day laborer during the requisite period at the time of his interview with a CIS officer. These inconsistencies cast doubt on this declarant's testimony regarding how and when he met the applicant.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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).

The director denied the application for temporary residence on December 6, 2006. In denying the application, the director noted that though the applicant stated that he was never arrested in the United States, CIS records indicated that, as was previously noted, the applicant was arrested on December 14, 1992. The director also noted that though the declaration from [REDACTED] states that he has known the applicant since 1980, the applicant testified that he met this declarant in either 1983 or 1984. The director found that the applicant failed to meet his burden of proving by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant asserts that he has resided in the United States from 1980 until the present day. He submits a declaration from [REDACTED] in support of his application that is dated December 29, 2006. The declarant submits a photocopy of his Permanent Resident Card, a photocopy of his Driver's License, and Forms W-2 issued to the declarant in 1977, 1978, 1979, 1980, 1981, 1983, 1984, and 1986 and corresponding Forms 1040 for the years 1977 through 1986 with his declaration. The declarant states that he met the applicant in Mexico in 1968 and that he knows that the applicant entered the United States in early 1980 because he is close to the applicant's family. He states that he kept in contact with the applicant during the requisite period at family gatherings, on holidays and during birthdays. However, the declarant fails to indicate where these gatherings occurred or to state the frequency with which he saw the applicant in the United States during the requisite period. He does not state whether there were periods of time during the requisite period when he did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, the applicant has submitted two declarations in support of his application. The declaration from [REDACTED] states that the declarant met the applicant in 1980 at a company called IFCO. However, the applicant did not state that he has ever worked for a company called IFCO. Therefore, doubt is cast on statements made by [REDACTED] in his declaration. Though the applicant also submitted a declaration from [REDACTED] in support of his application, this declaration is significantly lacking in detail such that it cannot be accorded sufficient weight to satisfy the applicant's burden of proof. Further, the applicant has stated that he has never been arrested, when CIS records indicate that he was arrested on December 14, 1992. This inconsistency casts doubt on the credibility of statements made by this applicant generally.

In this case, the absence of credible, sufficiently detailed, probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions 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 inconsistencies 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.