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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-363-13009

Office: SEATTLE

Date: SEP 18 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Seattle. 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 denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted a number of inconsistencies between the applicant's testimony and other evidence in the record. The director also found that some affidavits submitted by the applicant lacked probative value because the affiants failed to establish that they had resided in the United States during the requisite period.

On appeal the applicant has submitted evidence to establish that three of the witnesses who submitted affidavits in support of his application were, in fact, residing and/or working in the United States during the requisite period. The applicant has also submitted witness statements intended to show his good moral character and his involvement in the community.

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. 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).

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 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 furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 28, 2005. The information contained in the Form I-687 application is internally inconsistent. At part #30 of the Form I-687, where applicants were asked to list all residences in the United States since first entry, the applicant listed his residence as [REDACTED] Elma, Washington for the years 1981 to 2001. At part #33 of the application, where applicants were asked to list all employment in the United States since January 1, 1982, the applicant indicated that he was employed by Albros Custom Harvest Inc. in Greenfield, California from April 1981 until 1987. It is not credible that the applicant was living in Elma, Washington and working in Greenfield, California during the same time period, because Elma, Washington and Greenfield, California are several hundred miles apart and therefore not within normal commuting distance. This is a material inconsistency which detracts from the credibility of the applicant’s claim.

The information provided on the Form I-687 application also conflicts with other evidence in the record. For example, the applicant submitted affidavits and written statements from [REDACTED] and [REDACTED] which are intended to provide proof of the applicant’s residence in the United States during the requisite period. Specifically, the record contains the following:

- A letter from [REDACTED] and [REDACTED] dated November 27, 2006. The declarants state that the applicant resided with them from 1982 until 1990 at [REDACTED] in Glendale, California.
- An affidavit from [REDACTED] and [REDACTED] dated November 9, 2006. The affiants state that the applicant lived with them from 1982 until 1990 at [REDACTED] in Glendale, California.
- A letter from [REDACTED] and [REDACTED] dated April 17, 2001. The letter states that the applicant lived with them from 1981 until 1990 at [REDACTED] in Glendale, California.
- An undated letter from [REDACTED] which states that he and the applicant shared an apartment at [REDACTED] in Glendale, California for “a couple of years.”

The director found that the testimony of [REDACTED] lacked probative value because there was no evidence that she resided in the United States prior to May 8, 1992. The applicant did not provide any evidence to refute the director’s finding with respect to [REDACTED] residence in the United States. The director also found that the testimony of [REDACTED] lacked probative value because there was no evidence that he had resided at [REDACTED]. In response, the applicant provided copies of two California driver licenses issued to [REDACTED]. One was issued on June 7, 1985 and the other was issued on November 3, 1989. Both licenses list [REDACTED]’s address as [REDACTED] Glendale, California. These documents are sufficient to show that [REDACTED] resided at [REDACTED] for at least a portion of the requisite period.

Aside from the issue of their residence in the United States, the written statements by [REDACTED] and [REDACTED] conflict with the information provided by the applicant in his Form I-687 application. The applicant did not indicate on his Form I-687 application that he ever resided at [REDACTED] in Glendale, California. Instead, as noted above, the applicant listed his address as [REDACTED] Elma, Washington for the years 1981 to 2001. This is a material inconsistency which detracts from the credibility of the affidavit and written statements. Further, these written statements lack probative details such as how the affiants came to know the applicant or how they date their initial acquaintance with the applicant. Given the inconsistencies between these statements and the Form I-687 application, as well as their lack of probative detail, these written statements will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

There is also conflicting information in the record regarding the applicant’s employment. As noted above, the applicant stated on his Form I-687 application that he was employed by Albros Custom Harvest, Inc. from April 1981 until 1987. The applicant also submitted a letter signed by [REDACTED] on letterhead from Albros Custom Harvest, Inc. The letter states that the applicant was employed by Albros Custom Harvest, Inc. as a farm laborer from January 1981

until April 1987. The director noted that similar letters had been found by the Service to be fraudulent. The director also noted that the applicant provided contradictory testimony when he was interviewed by an immigration officer. Specifically, the applicant testified that he only worked as a farm laborer until 1982. This is a material discrepancy between the applicant's testimony and his Form I-687 application and it seriously detracts from the credibility of the applicant's claims.

The applicant has also submitted evidence that he was employed by Glenoaks Convalescent Hospital from 1982 until 1985. Specifically, the applicant submitted a letter from [REDACTED] dated April 30, 2002. In the letter, [REDACTED] states that records of the applicant's employment do not exist because employee records are only maintained for five years. However, she explains that another employee informed her that the applicant had been an employee of Glenoaks Convalescent Hospital from 1982 to 1985. The applicant did not list his employment with Glenoaks Convalescent Hospital on his Form I-687 application. This is a material inconsistency which detracts from the credibility of the applicant's claim. Further, this letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not provide the exact period of employment. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this letter has only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a written statement from [REDACTED] dated November 11, 2006 and a written statement from [REDACTED] dated February 1, 2007. Both declarants claim to have worked with the applicant at Glenoaks Convalescent Hospital from 1982 until 1984. The applicant also submitted a written statement from [REDACTED] Owner/Supervisor – Maintenance, Glenoaks Convalescent Hospital. The statement is dated November 1, 2005 and states that both [REDACTED] and [REDACTED] were employed at Glenoaks Convalescent Hospital from 1975 until 1984. However, as noted above, the applicant did not list his employment with Glenoaks Convalescent Hospital on his Form I-687 application. This is a material inconsistency which detracts from the credibility of the applicant's claims.

The applicant also submitted a letter from [REDACTED] dated May 13, 2002. The letter states that the applicant worked for [REDACTED] Painting in California from 1981 to 1983 and again from 1986 until 1990. This employment is not listed on the Form I-687 application and was not mentioned by the applicant during his interview before an immigration officer. This is a material inconsistency which detracts from the credibility of the applicant's claims. Further, the letter does not comply with the regulation relating to past employment records. Specifically, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this letter will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a letter from F [REDACTED] dated December 3, 2006. Mr [REDACTED] states that he worked with the applicant as an employee of Gangi Construction Company in Glendale, California from 1985 until 1989. In addition, the applicant submitted a copy of a pay stub from Gangi Builders, Inc. dated October 9, 1985. Although these documents provide some evidence of the applicant's employment in the United States during the requisite period, the applicant did not list this employment on his Form I-687 application. This is a material inconsistency which detracts from the credibility of the applicant's claim.

The applicant also submitted a copy of a driver license issued to him by the California Department of Motor Vehicles on July 5, 1985. His address on the driver license is listed as [REDACTED] in Glendale, California. Although this document provides some evidence of the applicant's residence in the United States during the requisite period, it is insufficient to establish the applicant's residence in the United States throughout the entire requisite period. In addition, the address on the driver license conflicts with the address provided by the applicant on his Form I-687 application.

The record also contains a number of documents submitted by the applicant which fall outside the requisite period. These include witness statements, rent receipts, retail receipts, utility bills and copies of driver licenses. As these documents are outside the requisite period they have no probative value with respect to the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire requisite period. The evidence must be evaluated not by its quantity but by its quality. *Matter of E-M, supra* at 80. The absence of sufficiently detailed supporting 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 contradictory information in the record and the applicant's reliance upon documents with little or no 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.