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FILE:



Office: LOS ANGELES

Date:

OCT 06 2008

MSC 06 101 14735

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:

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 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, the applicant reiterated that he had resided in the United States during the requisite period and asked that the evidence be reconsidered.

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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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 (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.

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.

The applicant stated, on the Form I-687 application, that his date of birth is June 6, 1967. The applicant also stated, on the Form I-687, that he worked as a sewing machine operator for [REDACTED] Manufacturing Incorporated from November 1982 to January 1987. This office notes that the applicant was 15 years old in November 1982.

On his application the applicant was required, at Item 30, to provide an accurate history of all of his residences in the United States. As part of that history, the applicant stated that, from November 1982 to May 1990, he lived at [REDACTED] in North Hollywood, California. He did not list a residence prior to November 1982.

The applicant also stated, at Item 16 of the application, that he last entered the United States on November 15, 1982. At Item 32, he stated that his only absence from the United States since his first entry was from December 1987 to January 1988. That information, taken together, would indicate that the applicant did not enter the United States until November 15, 1982, and that the application may not be approved. At his interview, the applicant indicated that he was absent from the United States on three occasions during the requisite period.

During his Legalization interview, however, the applicant stated that the information on the I-687 application, that he did not live in the United States until November of 1982, was mistaken. The applicant stated, at that interview, that he first lived at [REDACTED] the United States during December of 1981.

This office notes that the distance from North Hollywood, California, where the applicant claims to have lived from November 1982 to May 1990, to Ontario, California, where the applicant claims to have worked from November 1982 to January 1987, is roughly 50 miles.

The pertinent evidence in the record is described below.

- The record contains a sworn statement, dated October 18, 2006, written by the applicant, signed by him, and sworn to before a CIS officer. In that statement the applicant wrote that he first entered the United States during December 1981.
- The record contains notes from a CIS officer's interview of the applicant. At that interview the applicant stated that his first entry was during December of 1981. When asked about the entry at Item 16 on the Form I-687, the applicant stated that he had left the United States during November 1982 and returned on November 15, 1982. When asked whether that was his last entry into the United States, the applicant stated that his last entry was after an absence that lasted from December 1986 to January 1987. When informed that the Form I-687 shows that he was absent from December 1987 to January 1988, the applicant added that as a third departure. The applicant's answers at the interview are inconsistent with the information he provided on the Form I-687.
- The record contains an affidavit, dated April 17, 2006, from [REDACTED] of Sun Valley, California. Ms. [REDACTED] stated that she has known the applicant since December 1, 1982. The affiant did not state how she was able to date her initial acquaintance with the applicant or state the frequency of their contact.
- The record contains an affidavit, dated April 19, 2006, from [REDACTED] of [REDACTED] North Hollywood, California. Mr. [REDACTED] stated that he was a friend of the applicant's parents in Mexico and has known him almost since birth. He further stated that he married the applicant's sister in 1976. Finally, he stated that he is able to confirm that the applicant has resided continuously in the United States since 1981 because beginning in 1981 the applicant lived with him and his wife for about five years.

This office notes that the applicant stated, at Item 30 of the Form I-687 application, that he lived at [REDACTED] from November 1982 to May 1990, a period of seven and one half years, rather than about five years.

Further, according to notes in the file, a CIS officer contacted the affiant on January 9, 2008. The affiant stated that the applicant came to the United States in approximately 1985, 1986,

or 1987. The affiant further stated that the applicant lived with him and his wife “off and on,” but he cannot remember when. The affidavit of [REDACTED] will be accorded no evidentiary weight.

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. Further, 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). The inconsistencies between this April 19, 2006 affidavit of [REDACTED] and the applicant’s statement, and the inconsistencies between it and information subsequently obtained from the affiant himself, cast doubt not only on that individual affidavit, but on all of the applicant’s assertions and his evidence.

- The record contains pay stubs that purport to have been issued to [REDACTED] by [REDACTED] of [REDACTED] in Ontario, California during 1985. Those pay stubs cover pay dates from November 1985 to May 1986. At his interview, the applicant stated that [REDACTED] is the same company as [REDACTED] Manufacturing, Inc.
- The record contains a 1985 Form W-2 Wage and Tax Statement issued to [REDACTED] by [REDACTED] Manufacturing – [REDACTED], of [REDACTED] in Ontario, California. That form shows that [REDACTED] a total of \$223.19 during that year, and that his address was [REDACTED] in Ontario, California. The applicant did not claim, though, in his exhaustive list of his United States residences, to have lived at [REDACTED] or at any other address in Ontario, California.

Again, 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 pursuant to *Matter of Ho*, 19 I&N Dec. 582. That the applicant’s 1985 W-2 form is addressed to him at a location where he does not claim to having lived, not only discredits the 1985 W-2 form, but undermines the credibility of all the applicant’s assertions and evidence.

- The record contains an affidavit, dated April 18, 2006, from [REDACTED] of Palmdale, California. Mr. [REDACTED] stated that he personally knows that the applicant “resided in the United States as follows: San Fernando Valley since 1983 – Present.” This office notes that the applicant claimed, during that time, to have lived at various addresses in North Hollywood and Sun Valley, California, both of which are in the San Fernando Valley. Mr. [REDACTED] stated that he first met the applicant in 1983.

However, notes in the record indicate that a CIS officer contacted the affiant on January 9, 2008. The affiant then stated that he is not sure when the applicant came to the United States, but that it may have been during 1986 or 1987.

Because the instant affiant has disclaimed an essential part of his own sworn statement, that is, that the applicant entered the United States prior to 1986, and because of the other discredited evidence in the record, the affidavit of [REDACTED] will be accorded no evidentiary weight. Further, the discrepancy between the April 18, 2006 affidavit of [REDACTED] and the statements attributed to him on January 9, 2008 diminish, yet again, the credibility and evidentiary weight of the balance of the applicant's evidence.

- The record contains an Unemployment Compensation – Notice of Computation issued by the California Employment Development Department to [REDACTED] of [REDACTED] in Ontario, California. That document shows that during the last quarter of 1984 and the first two quarters of 1985 [REDACTED] had no earnings, and that during the third quarter of 1985 he earned \$429.64.
- The record contains a 1988 W-2 Wage and Tax Statement issued to [REDACTED] by [REDACTED] of North Hollywood, California. That document shows that the applicant earned \$8,689.38 working for that company during that year.
- The record contains an affidavit dated, April 19, 2006, from [REDACTED] of North Hollywood, California. The affiant stated that he knew the applicant in Mexico, and that the applicant subsequently moved to the United States during June of 1981. The affiant states that, because they were in regular contact and attended each other's family events, he is able to attest to the applicant's residence in the United States from June 1981 to the date of the affidavit. The affiant did not state when he, himself, moved to the United States.

This office notes that the affiant's statement, that the applicant entered the United States during June 1981 conflicts with the applicant's statement, on his sworn statement of October 18, 2006, that he first entered the United States during December of 1981.

- The record contains an affidavit, dated April 19, 2006, from [REDACTED] of North Hollywood, California. The affiant states that he is the brother of the mother of two of the applicant's children, with whom the applicant was living on the date of the affidavit. The affiant further states that to his own personal knowledge the applicant lived in the United States beginning in 1981. The affiant did not state the basis for this asserted knowledge. Because of the lack of any stated basis for the affiant's claimed knowledge, that affidavit, even standing alone, would be accorded very little evidentiary weight.
- The record shows that the applicant was charged with having violated, on or about May 15, 1999, California Penal Code section 647(B) disorderly conduct: prostitution. On June 28, 1999 the applicant was convicted of that offense, pursuant to his plea of *nolo contendere*. The applicant was placed on summary probation for 12 months and fined \$210.

¹ This office does not attach any significance to the two variations of the applicant's last name.

- The record shows that, on September 22, 2006, the Executive Office of Immigration Review, in removal proceedings against the applicant, upheld the results of the decision below and found that the applicant was removable. The applicant was accorded 60 days to voluntarily depart from the United States and noted that, if the applicant failed to depart within that period, he would be subject to a fine of not less than \$1,000 and not more than \$5,000, and would be ineligible for a period of ten years for any further relief under section 240B, 240A, 245, 249, or 249 of the Act.
- The record contains a Form I-589 Application for Asylum that the applicant filed on October 23, 2002. Item 18 on that application indicates that, at his November 14, 2002 asylum interview the applicant stated that his only entry into the United States was on November 15, 1982.

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

With the Form I-687 application, the applicant submitted no evidence in support of his claim of continuous residence in the United States during the requisite period.

In a Notice of Intent to Deny (NOID), dated March 29, 2006, the Director, National Benefits Center, noted that the applicant failed 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 additional evidence.

In response the applicant submitted the affidavits, unemployment insurance notice, pay stubs and W-2 forms that are described above. The applicant also submitted his own statement, in which he asserted that because he was undocumented during the period of requisite residence, he has no records from that period, and is relying on acquaintance affidavits.

On January 10, 2008, the District Director, Los Angeles, issued another NOID in this matter. In it, the director noted various discrepancies in the record and stated that the applicant had thus far failed to provide sufficient credible evidence to demonstrate that he continuously resided in the United States during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted a declaration² dated January 31, 2008. The applicant indicated that he arrived in the United States during 1981, rather than 1982, and that during his interview he was confused about the various dates and answered some questions incorrectly. The applicant did not otherwise address the many discrepancies in the record.

² Although the applicant stated on that declaration, "I declare under penalty of perjury that the foregoing is true and correct . . .," the declaration contains no indication that it was sworn to before an official authorized to administer oaths. That declaration is not, therefore, a sworn affidavit.

In the Notice of Decision, dated April 9, 2008, the director denied the application based on the reasons stated in the NOID. On appeal, the applicant submitted his own declaration, dated May 7, 2008, and copies of evidence previously submitted. In his declaration the applicant reiterated that he had lived in the United States since 1981, but did not otherwise address any of the discrepancies noted above.

Some of the items of evidence in this matter, although relevant to material issues, are directly contradicted by the applicant's assertions, or their credibility was impeached by subsequent questioning of the affiants or by other evidence in the record. Those items of evidence therefore have no evidentiary value. They include the April 19, 2006 affidavit of [REDACTED], the 1985 W-2 from [REDACTED] Manufacturing, the April 18, 2006 affidavit of [REDACTED] the pay stubs from [REDACTED], the unemployment computation notice, and the April 14, 2006 affidavit of [REDACTED].

Other relevant items of evidence would have had some slight evidentiary value standing alone. That evidentiary value has been undermined, however, by the many unresolved material inconsistencies between the balance of the applicant's evidence and his assertions. In any event, the evidentiary value of those few items, even unimpeached, would have been insufficient to support the applicant's claim.

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 on this basis. 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.