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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAY 05 2008

MSC-05-216-10319

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 Records 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, California. 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 denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant appealed the director's decision on September 7, 2006.

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 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 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient evidence to meet his claim of continuous residence in the United States during the requisite period in an unlawful status commencing since prior to January 1, 1982. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 4, 2005. 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 showed his first address in the United States to be at 11257 Collett Avenue, Granada Hills, California from 2002 to present (i.e. April 10, 2005). Similarly, at part #33, he showed his first employment in the United States to be for Sigue Corporation, 1518 San Fernando, San Fernando, California in the occupation of "reception" from 2002 to present (i.e. April 10, 2005). According to part #32 of the Form I-687 that requests information concerning absences from the United States since entry, the applicant stated that he was residing in Mexico from February 1970 to May 2002.

According to the applicant's birth certificate found in the record of proceeding, the applicant was born in Mexico on February 28, 1970.

The applicant submitted documents from [redacted] of Pacoima, California, (the applicant's employer from 1988 to 1999); from [redacted] of Panorama City, California (the applicant's employer from 1998 to 2005); from [redacted] of Granada Hills, California (the applicant's employer from 1995 to 1999); from [redacted] of North Hills, California (the applicant's uncle with whom the applicant lived from 1994 to 1997); from [redacted] of Granada Hills, California (the applicant's brother with whom the applicant lived from June 1997 to 2004); and from [redacted], of Pacoima, California (a friend then relation who knew the applicant from 1993 according to her affidavit to 2005). None of the above affiants stated that the applicant was present in the United States prior to January 1, 1982 and therefore the declarations

have no probative value in supporting the applicant's claim that he entered the United States in prior to 1982.

The applicant has submitted an affidavit made November 19, 2005, from of Palmdale, California. The affiant stated that he is the brother of the applicant. He stated "In 1987 my father returned to Mexico and I took full custody of my younger brother [redacted] Immediately he began working and working around the house. He lived with me till [sic] about the end of 1994." In 1987, the applicant would have been 17 years old. The affiant failed to state where the applicant was located in 1987 when his brother took custody, in Mexico or the United States, or when the applicant first entered the United States.

Further, the applicant submitted a letter statement dated April 10, 2005, from [redacted] general manager of [redacted] Custom Harvest Inc. (a farm labor contractor) stating that the father of the applicant [redacted] worked with the company as a farm laborer from January 1984 to April 1987.[1] The letter does not mention the applicant so it has no probative value.

On January 28, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. According to the regulation at 8 C.F.R. § 245a.2(d)(3) the director requested that the applicant provide a statement from the U.S. Social Security Administration, immunization records for the applicant for years 1981 to 1985 and his records from elementary and junior high school. Further the director requested transcripts of the applicant's father's U.S. federal tax returns from 1981 to 1987 (corresponding to the years that according to the applicant he resided as a dependent with his father).

In response to the NOID, the applicant on February 11, 2006, submitted the following:

- A letter from [redacted] of Universal Asphalt Co., Inc. of Santa Fe Springs, California, dated December 7, 2005, that he was "fully aware" of the applicant's arrival in the United States in 1979 since he hired and employed the applicant's father in 1980 until 1987. According to [redacted] he employed the applicant in 1986.

The above letter and the term of employment of the applicant's father at Universal Asphalt Co., Inc. is inconsistent with the letter statement submitted by the applicant from Albros Custom Harvest Inc. stating a term of employment as a farm laborer from January 1984 to April 1987. Further, there is no information provided in the above letter from Universal Asphalt Co., Inc. to explain if there was a relationship between the declarant and the applicant, how and when Mr. Burgos met the applicant (if

[1] Also included with the application is a statement dated December 8, 2005, from [redacted] of Santa Rosa church of San Fernando, California, that the applicant is a non-registered member of our parish. There is no information in the letter concerning when the applicant was first a member of the church congregation or the applicant's residences during that time.

they ever met), their frequency of contact or the applicant's address(s) during the requisite period. [redacted] employed the applicant's father in 1980 a year after the applicant stated he arrived in the United States in 1979. There is no information how [redacted] learned that the applicant first came to the United States a year before.

- A letter dated February 11, 2006, from the applicant that he submitted seven affidavits attesting to his presence in the United States and a "copy of my vaccination record attesting to my presence in the United States during the periods of 1979 / 1980 and 1981."

No vaccination record was found in the record of proceeding.

- An original Form G-325 signed by the applicant and dated December 12, 2005.

To establish his eligibility, an applicant must provide evidence of eligibility apart from his own testimony. *See* 8 C.F.R. § 245a.2(d)(6).

- A copy of the biographic page of the applicant's Mexican passport and an Employment Authorization Card issued to the applicant in 2005.

- The applicant's U.S. federal personal income tax returns for the years 2000, 2001, 2002, 2003 and 2004. The 2004 tax return has a W-2 statement from Sigue Corporation of San Fernando, California.

Since the director requested transcripts of the applicant's father's U.S. federal tax returns from 1981 to 1987 corresponding to the years that according to the applicant he resided as a dependent with his father, the applicant's submission of his own returns are not responsive to the director's request. Further the applicant's tax returns for the years 2000 to 2004 do not relate to the issue of when the applicant first entered the United States.

- A letter from [redacted], of Moore Industries, North Hills, California, that the applicant was employed by this company as of September 26, 2005.

- A letter from [redacted] of Universal Asphalt Co., Inc. of Santa Fe Springs, California, dated December 7, 2005, already mentioned above.

The above two letters do not provide information concerning when the applicant first entered the United States, or establish his residence during the requisite period.

The director denied the application for temporary residence on August 9, 2006. The director found that the evidence as mentioned above was insufficient to support a conclusion that the applicant had continuous unlawful residence in the United States since before January 1, 1982.

On appeal, the applicant asserts that he resided in the United States from December 1979 through 1988 except for an absence less than 30 days and that he was a "victim of fraudulent documentation when [his] Form I-687 application was submitted on April 10, 2005."

The applicant submitted on appeal the above mentioned letter dated December 7, 2005, another Form I-687 application dated December 9, 2005 (the application was not filed), and an addendum to the Form I-687 dated August 30, 2006 prepared by the applicant.

The regulations allow the applicant to submit a broad range of documents to satisfy his burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). All of the above mentioned affidavits do not state that the applicant entered the United States prior to January 1, 1982, according to the personal knowledge of the affiant. An affidavit made November 19, 2005, from [redacted] of Palmdale, California, the applicant's brother is worded ambiguously and does not directly stated that according to the personal knowledge of the affiant, the applicant was present in the United States with his father [redacted] during the requisite period. This is important in the context of these proceedings since according to [redacted] the applicant was in the care and custody of the father when the father was in the United States.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for his own assertions, unsupported by independent objective evidence, or statements and affidavits noted above. Although the applicant has provided proof of residence in the United States after 2000, such proof does not cover the entire requisite period. His contradictory testimony also raises doubts as to his current claims of residency.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982, 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 she has failed to establish by a preponderance of the evidence to meet his burden of establishing that she had entered into the United States before January 1, 1982, 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.