identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Room 3000
Washington, DC 20529-2090
MAIL STOP 2090

U.S. Citizenship and Immigration Services

L 1

[redacted]

FILE: [redacted] Office: HOUSTON Date: NOV 24 2008

MSC-06-075-14886

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, your file has 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 if your case was remanded for further action, you will be contacted.

John F. Grissom, Acting 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, Houston. 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in an unlawful status for the requisite period. Specifically, the director noted material inconsistencies regarding the applicant's entry into the United States in that the applicant had testified before an examiner and his counsel of record on at least three occasions that he initially arrived in the United States alone on January 1, 1982 at fourteen years of age in the vicinity of Laredo, Texas, and signed a sworn statement stating the same. The director then issued a notice of intent to deny (NOID) in which she concluded that the applicant had not met the physical presence requirements pursuant to Section 245A(a)(2)(A) of the Act. In response to the NOID, the applicant through counsel stated he had misunderstood the question due to his limited English language ability and submitted an affidavit in which he indicated that he had arrived in Laredo, Texas, on December 19, 1981, before finally settling in Waco, Texas, with three other individuals on January 1, 1982,. On her final decision, the director concluded that the applicant is not credible because of the discrepancies between his testimony, the sworn statement, and the following affidavit that he submitted. The director also noted that the applicant had listed January 1, 1982 as the date of his first arrival in the United States on a declaration form and Form I-687 that he filed in 1990, and for all these reasons, she determined that the applicant had not met his burden of proof that he entered the United States before January 1, 1982.

On appeal, the applicant submits an affidavit in which he reaffirms his claim that he had arrived in Laredo, Texas, on December 19, 1981, and reached Waco, Texas, on January 1, 1982. Counsel for the applicant asserts that the applicant has satisfied the burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has continuously resided in an unlawful status since such a date through the date he filed the application for temporary resident status pursuant to Section 245A of the Act.

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).

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, "[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 or petition.

The sole issue in this case is whether the applicant entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status for the requisite period of time.

In support of his appeal, the applicant submits a notarized affidavit in which he describes his journey from his hometown in Mexico to Waco, Texas. The record indicates that the applicant was a 14-year-old boy when he entered the United States in December 1981. Along with his Form I-687, the applicant submitted 11 affidavits, all of which were executed in January 1991 by former employers, roommates or landlords, and friends. Affidavits from [redacted] all attest to the applicant's employment in the United States from January 1982 to January 1991. However, these affidavits have very limited probative value because they were typed on fill-in-the-blank forms, did not include exact periods of employment, were not attested to by each of the employer-affiant under penalty of perjury, and did not state the employers' willingness to come forward and give testimony if requested as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i).

In separate affidavits, [redacted] also claimed to have provided the applicant with room and board between 1982 and 1991. They typed their affidavits on fill-in-the-blank forms and did not include proof of residence at the time they provided room and board to the applicant. It is not clear from the record whether they were the applicant's landlords or roommates and whether the applicant paid rent during this time. Credible affidavits are those which include some document identifying the affiant, some proof of the affiant was in the United States during the statutory period, some proof that there was a relationship between the applicant and the affiant, and a current phone number at which the affiant may be contacted for verification. None of the affidavits that the applicant submitted here meet all of the aforementioned criteria. For these reasons, the applicant's claim of continuous residence in the United States throughout the requisite period as evidenced by these affidavits is probably not true.

The remaining evidence to be considered from the record is four affidavits from individuals who claim to be the applicant's acquaintances since 1980. All of them stated in their affidavits that the applicant possesses good moral character. Regarding affidavits from personal acquaintances or friends, quality not quantity of the evidence is what determines whether these affidavits are credible, truthful, and probative. *In the Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. *Id.* In this case, none of the affiants stated with any specificity where they first met the applicant, how they date their acquaintance with him, how they knew the applicant is of good moral character, or whether they have direct, personal knowledge of the address at which he was residing in the United States throughout the requisite period. The lack of detail regarding the events and circumstances of the applicant's residence do not support their claim of being the applicant's acquaintance since 1980.

On appeal, the applicant attempts to correct the inconsistencies regarding his first entry into the United States by explaining in an affidavit that he misunderstood the examiner's question due to

his limited English language ability. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. In this case, the record reflects that the applicant has not submitted any independent and objective evidence to show his entry into the United States before January 1, 1982.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and lack of specificities 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.