U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

L1

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 08 2009

MSC-06-098-23456

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.

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 Field Office 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 denied the application, finding 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. The entire record was reviewed and considered in rendering a decision on the appeal.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends, employment verification statements, employment contracts, earnings statements, tax returns, and a Form W-2. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains three identical form-letter affidavits from [redacted] and [redacted] The affidavits from [redacted] and [redacted] state that the affiants have known the applicant since 1981. The affidavit from [redacted] states that he has known the applicant since 1984. Although the affiants state that they have known the applicant during the requisite period, their statements do not supply enough details to lend credibility to their claimed relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived or was employed during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or

her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To be considered probative and credible, witness 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. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.[1]

The record contains a notarized employer letter, dated October 12, 1990, from [redacted]. The letter states that the applicant was employed by him from June 1982 to October 1986. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). [redacted] letter fails to comply with this regulation because it does not indicate whether the information he provided was from official company records. [redacted] fails to otherwise explain how he dated the applicant's employment with his company. Given this deficiency, [redacted] letter is of minimal probative value.[2]

The record also contains an employer letter from [redacted], dated February 15, 1991. The letter states that the applicant was employed with [redacted] from January 7, 1987 to August 11, 1989. This letter fails to comply with the above cited regulation because it does not: provide the applicant's address at the time of employment; duties with the company; and whether or not the information was taken from official company records. Furthermore, the letter fails to provide the [redacted] title and the company's address. Therefore, this letter alone is of little probative value. However, the applicant's employment with [redacted] is corroborated by other evidence in the record. The applicant furnished copies of earnings statements that show he was employed with [redacted] in July 1987 and November 1987.

---

[1] On appeal, the applicant furnished the aforementioned form-letter affidavits from [redacted] and [redacted] with typed statements on the back of the affidavits. The statements provide additional information on the affiants' relationship with the applicant during the requisite period. However, the affiants have not signed the statements to indicate their knowledge of the additional information presented. Therefore, these statements fail to bolster the probative value of the affidavits.

On appeal, the applicant furnished the employment verification letter from with a note from the applicant stating that [redacted] obtained the information from his file. The AAO notes that the applicant's own testimony does not resolve the deficiency in [redacted] letter. *See* 8 C.F.R. § 245a.2(d)(6)(an applicant must provide evidence of eligibility apart from his or her own testimony).

The applicant also furnished a copy of a 1988 Form W-2, Wage and Tax Statement, from [redacted], and his 1987 and 1988 tax returns.[3] When viewed together, these documents are evidence of the applicant's residence in the United States in 1987 and 1988.

The record contains an employment contract between the applicant and Farmers Co-Op Labor Association, located in Lamesa, Texas. The contract was signed on September 21, 1961 in Eagle Pass Texas. It was issued for the applicant's employment as a harvest hand in [redacted] from September 22, 1961 to November 3, 1961. The contract bears a terminated stamp dated November 12, 1961 at Eagle Pass, Texas. The record also contains an employment contract between the applicant and [redacted], located in Woodland, California. The contract was signed on August 15, 1964 in El Centro, California. The contract was issued for the applicant's employment in [redacted] and [redacted] from August 15, 1964 to October 15, 1964. The contract bears a termination stamp dated September 30, 1964. These documents are evidence of the applicant's presence in the United States prior to January 1, 1982.

The remaining piece of evidence in the record consists of a U.S. Postal Service registered mail receipt postmarked October 2, 1986. However, this receipt does not contain the applicant's name, address, or any other information that would serve to link it to the applicant. Therefore, it is without any probative value in this proceeding.

In denying the application, the director found that during the applicant's interview he testified that he entered the United States in 1960 and then returned in December 1982. The director stated that the applicant has seven children who were not born in the United States, and they entered the United States illegally with the applicant's assistance. The director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence that he was continuously present in the United States during the requisite period.

On appeal, the applicant asserts that during his interview he did not remember the exact year that he entered the Untied States because of his age and he was under pressure. The applicant refers to his employment contract dated September 21, 1961. The applicant states that his wife found a "permit" dated 1964 and he has a letter for every year. The applicant states that he entered the United States

---

[3] The AAO notes that the applicant's home addresses shown on his Form W-2 and tax returns are inconsistent with the address he showed on his Form I-687. The applicant stated on his Form I-687 that he resided at [redacted] Los Angeles, California from 1987 to 1989. The applicant's earnings statements and Form W-2 show that this address belongs to [redacted] Since the dates of the applicant's residence at [redacted] as shown on his Form I-687 correspond with the dates of the applicant's employment at [redacted], this discrepancy may merely indicate that the applicant erroneously listed his employment address as his residential address. Therefore, this inconsistency will not be considered material in these proceedings.

in 1981 and remained until 1987. The applicant states that he does not have a criminal record.[4] The applicant concedes that he has seven children born in Mexico who came to the United States with his assistance. The applicant maintains that he did not sign a sworn statement testifying that he first entered the United States in December 1982. The applicant requests his case to be reviewed.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.[5] The applicant has shown that he was in the United States prior to January 1, 1982, and in 1987 and 1988; however these dates do not cover the entire requisite period. The applicant has not submitted any probative evidence to show that he continuously resided in the United States from January 1, 1982 until 1987.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

---

[4] A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on May 21, 1992 he was arrested in San Bernardino, California and charged with *Infliction of Corporal Injury on Spouse or Cohabitant of Opposite Sex* in violation of section 273.5 of the California Penal Code ([redacted]

[5] The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).