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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-06-047-11751

Office: LOS ANGELES

Date: **FEB 03 2009**

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 "John F. Grissom".

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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted multiple inconsistencies between the applicant's testimony during his interview and the evidence of record.

On appeal, the applicant through his brief asserts that he has resided continuously in the United States since 1978. The applicant further states that he traveled to Mexico for a couple of days in 1983 to visit his ill father. Finally on appeal, the applicant notes that his amnesty application was not accepted because he had traveled to Mexico in 1987.

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 burden is upon the applicant to prove 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 here is whether the applicant has met his burden of proof by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status since such date and through the date he filed or attempted to file his application for temporary resident status.

During his interview with a United States Citizenship and Immigration Service (USCIS) officer on November 20, 2006, the applicant stated that he first entered the United States in 1977. The record contains testimony of the applicant and a personal declaration in which he indicates that he attempted to file the application for temporary resident status in May 1987 but that application was not accepted because he had traveled to Mexico for about a month in 1983.

To show continuous residence in the United States from 1977 through May 1987, the applicant submitted various documents such as a photocopy of his California driver's permit expired January 17, 1981; a post card from California Consumer Affairs reminding him to take the examination for a contractor's license dated March 2, 1981, and a letter from Santa Rosa Church. Along with these documents, the applicant also submitted seven affidavits from friends and families.

The burden, as noted earlier, is upon the applicant to prove by a preponderance of the evidence that he entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status since such date until he filed or attempted to file an application for temporary resident status pursuant to Section 245A of the Act. The burden is met when, based on relevant, probative, and credible evidence, the applicant's claim is probably true. Here, the driver's permit, the examination reminder, and the letter from Santa Rosa Church are relevant, probative, and credible as evidence of his entry into the United States before January 1, 1982, but are insufficient to establish continuous residence in the United States throughout the entire requisite period.

With respect to the affidavits submitted, quality, not quantity, is the decisive factor in the search for the truth. *Matter of E-M-*, *supra*. Affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question have greater weight than fill-in-the blank affidavits providing generic information. Here, [REDACTED] in her affidavit claims that she went to visit her nephew, the applicant, soon after his arrival in the United States in 1981. The affiant further states that her nephew lived in Pacoima, California and often came to visit her during the requisite period. When the amnesty program took effect in May 1987, the affiant indicates that she took her nephew to a local immigration office located on [REDACTED] in Los Angeles to apply for the amnesty program. Submitted along with her affidavit, the affiant included a photocopy of her current California driver's license and 2005 utility bills as well as her W-2 and individual income tax return for 1987.

Upon review, while the affiant has provided credible evidence as to her identity and presence in the United States in 1987, her affidavit is not evidence of the applicant's continuous residence in the United States throughout the requisite period. The affiant fails to indicate the applicant's whereabouts during the critical period between 1981 and 1987. Her reference to having met the applicant often without specific details of the events and circumstances of their meetings is not sufficient as evidence that the applicant resided in the United States during the requisite period. Additionally, based on the evidence of record, the applicant arrived in the United States in 1977 and lived in San Fernando, California, during the requisite period. Her claim that she visited the applicant in 1981 soon after his arrival in the United States and that the applicant lived in Pacoima, California, during the requisite period is inconsistent with the evidence of record. 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. No explanation is given or evidence submitted to reconcile the inconsistencies in the record; and for this reason, the affidavit from [REDACTED] has minimal probative value as evidence of the applicant's continuous residence in the United States throughout the requisite period.

In her affidavit, [REDACTED] asserts that her cousin, the applicant, lived in her house from 1977 until his departure to Mexico in 1989. Other than this statement, the affiant provides no further

detailed information or supporting documentation to show that she resided at the address specified on her affidavit. Her brief assertion that the applicant resided at her house during the requisite period by itself is not persuasive and insufficient to establish that the applicant resided continuously in the United States from 1977 to 1989.

Intending to show that the applicant continuously resided in the United States throughout the requisite period, [REDACTED] through his affidavit states that he visited the applicant shortly after the applicant arrived in the United States in 1977 and claims to have kept in touch with the applicant during the years through social visits and telephone calls. The affiant also indicates that he and the applicant both involved in fundraising events to raise money for the applicant's hometown in Mexico between 1985 and 1991. However, the affiant provides no detailed information pertaining to how often he kept in touch with the applicant through social visits, where he visited the applicant during the years, or where the applicant was when he made telephone calls, and whether the applicant was in the United States between 1985 and 1991 when he and the applicant were involved in the fundraising events. Because this affidavit is seriously lacking in relevant details, it lacks probative value and has only minimal weight as evidence of the applicant's eligibility for temporary resident status.

[REDACTED] claims in his affidavit that he was the applicant's roommate between 1977 and 1984. [REDACTED], however, fails to provide detailed information regarding his relationship with the applicant to indicate that the relationship probably did exist and the affiant does, by virtue of that relationship, has knowledge of the facts alleged. The affiant's claim that he was the applicant's roommate from 1977 to 1984 by itself is not probative as evidence of the applicant's continuous residence in the United States for the duration of the requisite period.

Both [REDACTED] and [REDACTED] wrote an identical affidavit in which they state that they have known the applicant since 1978, when the applicant started to work in construction. They also indicate that sometimes they got together with the applicant during weekends. Viewed individually and in light of other evidence of record together, these affidavits show that the applicant was in the United States before January 1, 1982, but do not establish that the applicant's stay in the United States was continuous for the duration of the requisite period. Both affiants do not specifically state with sufficient detail how long they worked together with the applicant in construction, or how often they got together with him during weekends, and whether they knew his whereabouts specifically from 1977 to May 1987. Thus, these affidavits are not evidence of the applicant's eligibility for temporary resident status.

Finally, [REDACTED] in his affidavit states that he first met the applicant at the store where the applicant has regularly frequented since 1986. This affidavit lacks probative value, however, because the affiant fails to describe with sufficient detail how he first met the applicant, how he dates his acquaintance with him, or whether he has direct, personal knowledge of the address at which the applicant was residing in 1986 and throughout the requisite period. The lack of detail in [REDACTED]'s affidavit as noted above is material considering that the affiant claims to have known the applicant since 1986.

A review of the record further reveals that the applicant got married on June 4, 1983 in Mexico. Furthermore, the record reflects that three of the applicant's children were born in Mexico on April 18, 1984, November 5, 1985, and September 23, 1988, respectively. At his interview on November 20, 2006, when asked about these children who were born in Mexico between 1984 and 1988, the applicant asserted that his wife traveled back to Mexico and stayed there when these children were born. The applicant further claimed at the interview that he only left the United States once in 1983 for one month between 1977 and May 1987.

On appeal, however, the applicant states that his visit to Mexico in 1983 was only for a couple of days. Furthermore, on appeal, the applicant indicated that his amnesty application was not accepted because he had traveled to Mexico in 1987. Nowhere in the record has the applicant listed or stated about his absence from the United States in 1987. The inconsistencies between his statements on appeal and the evidence of record seriously undermine his credibility and materially affect his claim that he continuously resided in the United States throughout the entire requisite period after his entry into the United States in 1977.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail as well as inconsistencies 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant 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.