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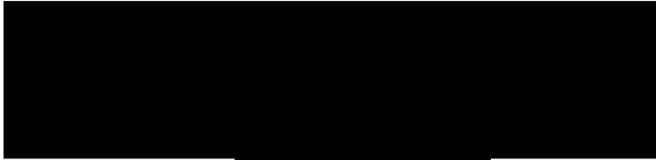
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

MSC-05-314-11814

Office: LOS ANGELES

Date: FEB 26 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. 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.

A handwritten signature in black ink, appearing to read "J. 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 and 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted that although the applicant had submitted some evidence to show that he was in the United States in 1981, 1982, and 1986, there was insufficient evidence submitted to demonstrate the applicant's continuous residence in the United States throughout 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.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his presence in the United States during the requisite period. The applicant submits additional evidence.

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).

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) 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on August 10, 2005.

The applicant submitted the following documentation as evidence:

- Copies of photographs whose specific dates and contents are not verifiable;
- A copy of the applicant's California Driver License dated March 13, 1981;
- A copy of the applicant's Application for Marriage Record dated May 18, 2005;
- A copy of the applicant's California Marriage Certificate dated May 5, 1982;
- A copy of the applicant's son's California Birth Certificate dated November 17, 1982;
- A copy of the applicant's daughter's California Birth Certificate dated December 7, 1983;
- A copy of an Interim License from the Department of Motor Vehicles dated March 9, 1984;
- A copy of a California Divorce Decree granted to the applicant's ex-wife as petitioner dated July 7, 1986; and,
- A copy of a Social Security Administration Earnings Statement bearing the name [REDACTED]

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since July of 1985 and that he met him through a recommendation of a friend to have the applicant do some landscaping work. He also stated that he hired the applicant to do yard work every two weeks and that they eventually became close friends. He further stated that the applicant told him that he entered the United States in 1979. Here, the affiant fails to specify the applicant's dates of employment.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1979 and that in December of 1986 the applicant asked the affiant to rent a room from him at [REDACTED] in La Puente, California. The affiant also stated that he knows the applicant came to the United States in 1979 to work because the applicant's father told him so over the phone. This affidavit is inconsistent with the applicant's Form I-687 application at part #30 where he stated that he resided at [REDACTED] in West Covina, California from February 1983 to December 1988.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since March 1987 and that he met the applicant at a Sports Bar and that the applicant told him that he entered the United States in 1979. He also stated that they became friends and that he would invite the applicant to family gatherings and celebrations. Here, the affiant's statements are not based upon his first-hand knowledge of the applicant's entry into the United States or his whereabouts and circumstances of his residency during the requisite period.

In denying the application the director noted that the Social Security Administration Earnings Statement submitted by the applicant in response to the request for evidence did not belong to him and that he failed to submit sufficient evidence to demonstrate continuous unlawful residence in the United States throughout the requisite period.

On appeal, the applicant asserts that he used his brother's name, [REDACTED] and social security number for work purposes, and that the Social Security Administration Earnings Statement submitted reflects the applicant's work history. The applicant asserts that he used his ex-wife's address on his Form I-687 application of [REDACTED] in West Covina, California from February 1983 to December 1988 although he went to live with [REDACTED] at [REDACTED] in La Puente, California from November 1986 until he left the United States in December 1988. The applicant also asserts that he was absent from the United States from December 22, 1986 to February 2, 1987. The applicant submits evidence on appeal.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the issues raised by the director. Although some of the evidence submitted by the applicant shows his presence in the United States in 1981, 1982, and 1984, it is insufficient to demonstrate his continuous unlawful residence in the United States throughout the requisite period. It is noted that there is insufficient evidence in the record of proceeding to demonstrate the reliability of the attestations submitted.

The applicant claims on appeal that he used his brother's name and social security number in securing employment in the United States however he has submitted no evidence to demonstrate that he and [REDACTED] are the same person. It is further noted that the applicant stated on his Form I-687 application at part #33 that he was employed as a gardener from 1979 to 1980; as a maintenance worker from 1981 to 1982; and as a self-employed gardener from 1984 to 1988, however, the Earnings Statement submitted shows earnings for 1974 and 1975 and no earnings for 1983 through 1988.¹

The applicant claims that he listed on his Form I-687 application at part #30 his ex-wife's address of [REDACTED] in West Covina, California from February of 1983 to December of 1988 although he was living elsewhere because he would receive mail there from time-to-time. Contrary to the applicant's claim, he submitted a copy of his ex-wife's petition for divorce dated July 7, 1986 where she lists her address as [REDACTED] in El Monte, California.² The applicant claims that he was absent from the United States from December 22, 1986 to February 2, 1987, however, he fails to submit any independent documentary evidence to substantiate his claim.

The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to his residency and employment in the United States. 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. It is incumbent upon the applicant to

¹ It is noted that the applicant testified under oath and under penalty of perjury during his immigration interview that he did not enter the United States until 1979.

² There is no evidence in the record to demonstrate that the applicant was present at the divorce hearing held in 1986.

resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above seriously detracts from the credibility of this 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 applicant's reliance upon documents that are lacking in probative value and are inconsistent with statements he made, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.