U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HOUSTON Date: SEP 0 8 2009

MSC 06 096 13306

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

for 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, Texas, 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 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.

On appeal, counsel asserts the applicant has submitted sufficient evidence to establish his eligibility. Counsel puts forth some of the same arguments submitted in response to the Notice of Intent to Deny.

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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 (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 applicant's Form I-687 application listed residence and employment in the United States from 1991 and 1992 only. Also, no absence or aliases were listed on the application.

At the time the applicant filed his Form I-687 application, he provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated March 29, 2006, counsel, in an attempt to establish continuous unlawful residence since prior to January 1, 1982 through the date the applicant attempted to file his application, submitted:

- An affidavit from [redacted], who indicated he accompanied the applicant in 1987 to the Houston legalization office; however, the application was rejected because the applicant had departed the United States on several occasions.
- Wage and tax statements for 1981 through 1985 from Baker & Hienemann, Inc, addressed to [redacted]
- A payroll receipt dated June 27, 1983 addressed to [redacted]
- A wage and tax statement for 1980 from Texas Basket Company addressed to [redacted]
- An affidavit from [redacted] who indicated that he met the applicant at a party in Houston, Texas in January 1981. The affiant attested to the applicant's moral character.

- An affidavit from [redacted], who indicated he met the applicant in 1985 at the company where he and the applicant were coworkers. The affiant attested to the applicant's employment under the alias [redacted] at Baker & Hienemann, Inc. in Houston, Texas.

Counsel also submitted an amended Form I-687 application, which listed 1) employment at Texas Basket Co. from 1980 to 1981; at Baker & Heineman, Inc. from 1981 to 1986; and Lone Star Co., from 1986 to January 1982; 2) an absence from September 20, 1987 to September 30, 1987; 3) residences in Jacksonville and Houston, Texas from 1980 to November 1991; and 4) the aliases, [redacted] and [redacted]

At the time of his interview on October 16, 2006, the applicant indicated that he first entered the United States in 1980 at the age of 12, but did not attend school as he worked full-time to support himself.

On January 5, 2007, the director issued another Notice of Intent to Deny, which advised the applicant that on his Form I-687 application filed January 4, 2006, he only listed residence and employment in the United States from October 1991 and January 1992, respectively. The applicant was also advised that: 1) the director was unable to verify the affidavits with the contact information provided; 2) [redacted] in his affidavit, did not claim to have personal knowledge of the applicant's continuous presence in the United States during the requisite period; 3) the wage and tax statements lacked credibility as they were addressed to another individual and the applicant did not claim on his application to have worked for these employers or to have been employed during these periods; and 4) his claim to have resided in the United States while working full-time at such a young age appeared to be highly suspect, especially in light of the lack of verifiable evidence.

Counsel, in response, asserted that the fact [redacted] affidavit did not state the exact date he met the applicant does not make the affidavit incorrect or invalid. Regarding the employment documents, counsel asserted that the applicant's former counsel failed to provide all the information on the Form I-687 application. Regarding the affidavits, counsel asserted that the applicant had contacted the individuals that provided him with an affidavit and "they have informed him that they have not been contacted by the Service officer."

Counsel submitted an additional affidavit from [redacted], who reasserted the veracity of his claim to have known the applicant since 1985. The affiant indicated that he and the applicant "were co-workers for several years at Lone Star, Co." and has maintained a friendship since that time. The affiant indicated that he was a witness to the applicant's employment under the alias [redacted] at Baker & Heinemann, Inc. The affiant based his knowledge of the applicant's employment at Baker & Heinemann, Inc because "[the applicant] was young then but he was really tall for his age so he had no problem obtaining a job there."

Counsel also submitted an additional affidavit from [redacted] who reasserted the veracity of his claim to have accompanied the applicant in September 1987 to the Houston Office. The affiant indicated that he met the applicant in 1985 or 1986 in Houston, Texas.

Counsel asserted that the applicant initially contacted a different counsel to file his Form I-687 application; however, the applicant became dissatisfied with counsel and transferred his case to her office. Counsel asserted that the applicant later discovered that his former counsel had not completed all of the information required in his application. Counsel asserted that on the date of the interview, an attorney was present at the Houston Office to represent the applicant as well as other clients. Counsel asserted, in pertinent part:

> When [the applicant] was called by his interviewing officer [the applicant's] attorney was inside in another interview. [The applicant] explained this to the office but the office informed him that he did not need his attorney and that he needed to proceed to the interview without his attorney. This denial of [the applicant's] rights to have his attorney present has unnecessarily led to this notice of intent to deny.

The director determined that the information submitted did not establish the applicant's credibility and the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on July 25, 2007.

On appeal, counsel asserts that the omittance of the applicant's employment and residence during the requisite period on his initial Form I-687 application was based on the lack of proper representation and review of the material presented by the applicant's former counsel.

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).

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

The wage and tax statements have no probative value or evidentiary weight as the applicant provided no evidence from the entities indicating that he and [redacted] and [redacted] are one and the same person. While it is common knowledge that some aliens have used aliases to gain employment, the burden of proof is on the individual to establish the use of the alias identity. 8 C.F.R. § 245a.2(d)(2). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that there is a notation from the

interviewing officer on the wage and tax statement for 1980, which indicates, [redacted] knew applicant's father."

As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. The applicant's failure to provide the name of the individual he resided with along with an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the affidavits submitted.

in his affidavit, attested to the applicant's employment at Lone Star Co. However, no evidence has been submitted to support this attestation.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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