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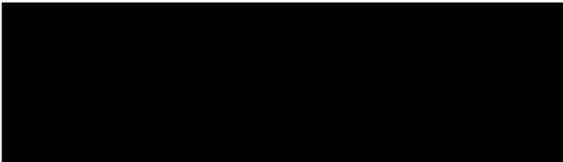
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



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FILE: 

Office: CALIFORNIA SERVICE CENTER

Date: NOV 24 2010

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the director of the California Service Center. 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). The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States as a nonimmigrant prior to January 1, 1982, and that his authorized stay expired before such date or that he violated the terms of his nonimmigrant status in a manner known to the Government as of January 1, 1982. Therefore, the director determined that the evidence submitted by the applicant does not establish that he is a NWIRP class member, and denied the application.

On appeal, counsel for the applicant asserts that the director erred in finding that the applicant failed to prove that he was in unlawful status in the United States prior to January 1, 1982 in a manner known to the government. On appeal, counsel has submitted an additional statement from the applicant, with supporting evidence.¹ The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 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. 8 C.F.R. § 245a.2(d)(5).

¹ The record reflects that the applicant's FOIA request, [REDACTED] was processed on July 15, 1998.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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, 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 in nonimmigrant status and (2) has continuously resided in the United States in an unlawful status known to the government throughout the requisite period. The evidence 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 witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. 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 applicant asserted that he initially entered the United States as a nonimmigrant on April 21, 1972, but he offered no evidence in support of his assertion.³ The applicant has submitted an employment verification letter from [REDACTED] office manager and co-owner of [REDACTED] [REDACTED] stating that the applicant was employed as a driver from December 15, 1975 through at least April 22, 1987, the date of the letter. The witness's letter lists the applicant's residence as [REDACTED]. This is inconsistent with the applicant's testimony in the I-687 application, in which the applicant does not list a residence on [REDACTED] [REDACTED] during the requisite statutory period.

In addition, the employment verification letter from [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. 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 of 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). The employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties or the number of hours or days he was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these reasons, the employment verification letter is of little probative value.

The record contains a copy of a California birth certificate for a child that the applicant has listed on the I-687 application as his son, born on December 25, 1971. However, the birth certificate does not list the applicant as the child's father. In addition, the applicant states that he did not enter the United States until April 21, 1972. For these reasons, the birth certificate will be given no weight.

The applicant has submitted a copy of his California marriage certificate, showing he was married on July 5, 1974. This document is some evidence of the applicant's residence in the United States for some part of 1974.

³ In the I-687 application, at part 22 of the application, the applicant does not provide a number for the Belizean passport with which he entered the United States, nor does the record contain copies of any documents with which the applicant traveled. On appeal, the applicant states that in 1990 his ex-wife destroyed the Belizean passport and visitor's visa with which he first entered the United States. In support of his assertion, the applicant has submitted a statement from his daughter, stating that in 1990, when the daughter was 9 years old, her mother burned all of her father's belongings.

The record contains the birth certificate of the applicant's daughter, born on July 19, 1981. This document is some evidence of the applicant's residence in the United States for some part of 1981.

The applicant has submitted two documents from the State of California dated March 10, 1987 and May 21, 1987, respectively, listing amounts of personal income tax due for the years 1982, 1983, 1984 and 1985. These documents list the applicant's residence as [REDACTED] in Salinas. This is inconsistent with the applicant's testimony in the I-687 application, in which he does not list a residence on [REDACTED] during the requisite statutory period. Due to these inconsistencies, these documents have minimal probative value.

The record contains a copy of a California driver's license dated March 17, 1988. This document is some evidence of the applicant's residence in the United States for some part of 1988.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application.⁴ The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the location where he first entered the United States, and the locations where he resided in the United States during the requisite statutory period.

On appeal, the applicant states that he first entered the United States on April 21, 1972 at Los Angeles, California with a tourist visa obtained in Belize. The applicant states that after he arrived in Los Angeles he stayed with a friend in an apartment in [REDACTED], although he does not state for how long he stayed at that address. The applicant also states that from the date of his first entry into the United States in 1972 until December 31, 1981, he lived in nine different residences in California, but he only lists four residences as follows: [REDACTED] Salinas; [REDACTED] [REDACTED] Street in Salinas; and, [REDACTED]. The applicant does state the period of time he lived at each address.

In the I-687 application, the applicant states that his April 21, 1972 entry into the United States was at Miami, Florida. The applicant's lists two residence addresses in the United States during the requisite statutory period, at 1310 Salinas Road, and from November 1986 through the end of the requisite period at [REDACTED].

⁴ The record reflects that the applicant failed to appear for two interviews concerning the I-687 application, on August 1, 1988 and September 30, 1988, respectively.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the location where the applicant first entered the United States and the location where the applicant resided during the requisite statutory period are material to the applicant's claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

The record reflects that the applicant was arrested on October 1, 2001, for violations of the California Penal Code (PC) as follows: one count of *DUI Alcohol/Drugs*; and, one count of *DUI Alcohol/0.08 Percent*. (Sheriff's Office of Salinas, California, case number 0012038). Because the application will be denied on other grounds, the AAO will not request court dispositions for these arrests.

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.