



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 174 10689

Office: LOS ANGELES

Date: DEC 17 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, 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 District Director, Los Angeles, California. 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, on March 23, 2005. The district 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 district director denied the application as 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 reiterates his claim of continuous residence in the United States during the requisite period and submits additional evidence in support of his claim. Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. See <http://usdoj.eoir/statspub/raroster.htm>. Therefore, this decision will be furnished to the applicant only.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

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.* 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 23, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at “██████████ Calexico, California” from August 1981 to August 1987 and at “██████████ Colton, CA ██████████” from May 2000 to the filing date of the application. At part #32, where applicants are instructed to list all absences from the United States since initial entry, the applicant indicated that he was living in Mexico from February 1988 to April 2000. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked for ██████████, farm labor contractor, as a field worker from August 1981 through June 1987.

During his interview with a CIS officer on February 15, 2006, the applicant stated under oath that he worked for ██████████ from 1983 to 1984. The applicant further stated that he

was in Mexico visiting family for the Christmas holidays in 1985. He explained that he returned to Mexico to live in 1988 and didn't return to the United States until 1997.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a letter dated August 24, 2005, signed by [REDACTED] a farm labor contractor located in Brawley, California. Mr. [REDACTED] stated that he was the owner of [REDACTED] from 1976 to 1989. He further stated that the applicant worked for his company as a farm laborer harvesting produce such as melons in 1981 and 1982 and was paid at the rate of \$4.25 to \$4.50 per hour in cash. Mr. [REDACTED] explained that his company ceased operation in 1989 and his statement regarding the applicant's employment by his company was based "only on personal knowledge."

Mr. [REDACTED] statement that the applicant worked for his company from 1981 to 1982 contradicts the applicant's statement on the Form I-687 that he worked for [REDACTED] from August 1981 through June 1987. It also contradicts the applicant's sworn testimony during his interview that he worked for [REDACTED] from 1983 to 1984.

The applicant also provided an affidavit dated February 14, 2006, from [REDACTED] who identified himself a commercial fisherman and captain/owner of commercial fishing vessels. Mr. [REDACTED] stated that the applicant worked for him part-time doing odd jobs such as painting, net work and repair of fishing vessels during the period from 1983 to 1988.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (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 CIS may have access to the records. The affidavit from Mr. [REDACTED] does not conform to this standard. Mr. [REDACTED] did not provide the applicant's addresses in the United States during the employment period. Therefore, this affidavit will be accorded little evidentiary weight.

On appeal the applicant reiterates his claim that he was in Mexico visiting family for the Christmas holiday in 1985. However, he did not provide any explanation as to why he failed to list this absence on his Form I-687.

The applicant explains that [REDACTED] a farm labor contractor, began doing business under the name [REDACTED] inc., in the "early to late 1980's." He provides an employment letter from [REDACTED] President of [REDACTED], in which Mr. [REDACTED] stated that the applicant worked for his company harvesting produce such as lettuce, tomatoes, onions, asparagus, and melons, during the period from 1981 to 1987. This statement contradicts Mr. [REDACTED] statement in his previous employment letter that the applicant worked for him during the period from 1981 to 1982. Mr. [REDACTED] provides no explanation for this change in the applicant's purported dates of employment for his company as a farm laborer. This revised

employment statement by Mr. [REDACTED] raises questions of credibility regarding the applicant's purported employment by his company during the requisite period.

Although the applicant claims on appeal that [REDACTED] began doing business under the name "[REDACTED] Inc." in the mid to late 1980's, he provided no evidence to corroborate his claim. Mr. [REDACTED] who identified himself as the former President of [REDACTED] Inc., makes no mention of [REDACTED] in connection with the ownership or operation of [REDACTED], Inc., in either of his letters.

The applicant provides an affidavit dated August 22, 2005, from [REDACTED], who identifies himself as the applicant's brother. [REDACTED] stated that he and the applicant lived together at [REDACTED] Anaheim, California" during the period from February 1983 to December 1985. This statement contradicts the applicant's statement on the Form I-687 that he lived at "[REDACTED], Calexico, California" from August 1981 to August 1987. The applicant has not provided any explanation for this contradiction in his claimed places of residence in the United States during the requisite period.

The applicant submits an affidavit dated April 12, 2006, from [REDACTED], a [REDACTED] Mr. [REDACTED] states that the applicant resided at "[REDACTED] Street, Calexico, California" during the period from August 1981 to August 1987. Mr. [REDACTED] indicates that he and the applicant are "work partners." However, he provided no information regarding the date he first met the applicant, the frequency of his contact with the applicant during the requisite period, the dates he and the applicant purportedly worked together, or the employer for whom they both purportedly worked. Therefore, this affidavit will be accorded little evidentiary weight.

Finally, the applicant included an employment letter relating to employment that began ten years after the expiration of the requisite period to establish continuous residence in the United States.

The discrepancies and contradictions noted above raise serious questions of credibility regarding the applicant's claim of continuous residence in the United States during the requisite period. 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. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only four people concerning that period, all of which either lack sufficient detail and verifiable information to corroborate the applicant's claim or contain statements that contradict the applicant's testimony on his Form I-687 and during his interview.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.