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U.S. Citizenship
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OCT 12 2007

FILE:

[REDACTED]

Office: NATIONAL BENEFITS CENTER

Date:

MSC-06-089-14618

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) was denied by the Director of the National Benefits Center and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. The director noted in his Notice of Intent to Deny (NOID) that applicant had not met his burden of providing evidence that he was admissible as an immigrant and that he had maintained continuous residence in the United States during the requisite period. The director went on to say that the applicant similarly failed to provide evidence that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he or his parent or spouse were turned away by the INS when he or his parent or spouse tried to apply for legalization. The director afforded the applicant thirty (30) days within which to submit evidence in support of his application. The director noted that he received three affidavits in response to his NOID. However, he stated that found that these affidavits did not offer proof that the applicant was present in the United States for the duration of the requisite period. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits additional evidence that pertains to the requisite period in the form of an affidavit and identification cards for both himself and the affiant. He submits a Form I-694 Notice of Appeal of Decision on which he states that he is attempting to gather more evidence and will submit a brief within thirty (30) days. It is noted here that the Service received the applicant's Form I-694 on September 29, 2006 and as of September 30, 2007 the Service has not receive a brief from this applicant.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously

in the United States in an unlawful status, and who 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, during the original legalization application period of May 5, 1987 to May 4, 1988, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant 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. 8 C.F.R. § 245a.2(d)(5).

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 December 28, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at an unnumbered address on Oxford Street in Los Angeles, California where he showed he lived from

1988 to 1990. It is noted here that the applicant did not show any addresses pertaining to the requisite period. At part #32 where the applicant is asked to list all of his absences from the United States he does not indicate that he has ever been absent since entering. At part #33 where the applicant was asked to list all employment in the United States dating back to January 1, 1982 the applicant showed that he has never been employed in the United States.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided documentation in the form of: official immigration documentation, four (4) affidavits and evidence that he had a child in Texas in 1983.

Details regarding evidence submitted is as follows:

Immigration documents:

- An appointment notice for a legalization interview during the initial application period. Without evidence to the contrary, this document appears to show that the applicant may have been able to successfully file for legalization during the initial filing period. Therefore, this document calls into question whether the applicant was "front-desked" or discouraged from filing for legalization during the original filing period. Further, this appointment notice alone does not carry sufficient weight to establish that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A temporary resident work authorization document showing that the applicant was authorized employment from May 10, 1988 until January 1, 1991. This document was issued after the requisite period ended. Therefore, this document does not carry any weight to establish that the applicant maintained continuous residence in the United States for the duration of the requisite period.

Affidavits:

- A notarized affidavit from [REDACTED] that states that the applicant lived at [REDACTED] from August 1985 to June of 2000. It is noted here that the applicant showed on his Form I-687 that he lived in Los Angeles from 1988 to 1990. He did

not indicate on this form that he lived in the United States prior to 1988. Further, the applicant does indicate that he lived in Junction from 1990 to 2000, but he indicated a P.O. Box number associated with his residence there and not the address provided by this affiant. Therefore, this affidavit is found to be inconsistent with other evidence in the record, casting doubt on assertions made in the affidavit regarding the applicant's residence in the United States during the requisite period. Because this affidavit only pertains to part of the requisite period and because it contains information that is not consistent with other evidence in the record, very little weight can be afforded to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

- A notarized affidavit from [REDACTED] that states that the affiant has known the applicant, whom he refers to as a friend and co-worker from March of 1986 to June of 2000. This affiant also states that the applicant lived at [REDACTED] during that time. It is noted here that the applicant showed on his Form I-687 that he has never worked in the United States. It is further noted that the applicant showed on his Form I-687 that he lived in Los Angeles from 1988 to 1990. He did not indicate on this form that he lived in the United States prior to 1988. Further, the applicant does indicate that he lived in Junction from 1990 to 2000. However, he indicated a P.O. Box number associated with his residence there and not the address provided by this affiant. Therefore, this affidavit is found to be inconsistent with other evidence in the record, casting doubt on assertions made in the affidavit regarding the applicant's residence in the United States during the requisite period. Because this affidavit only pertains to part of the requisite period and because it contains information that is not consistent with other evidence in the record, very little weight can be afforded to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A notarized affidavit from [REDACTED], who states that she is the applicant's sister-in-law. This affidavit does not make any reference to the applicant's address of residence during the requisite period. Therefore, no weight can be afforded to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] who states that the applicant is her brother-in-law. In this affidavit the affiant states that the applicant lived with her in Junction, Texas beginning in 1984 and that they began to live together during Christmas of 1984. The affiant fails to indicate the date through which the applicant lived at this address, to provide evidence that she lived at this address or to note what the address of residence in Junction, Texas to which she is referring to is. It is further noted that the applicant showed on his Form I-687 that he lived in Los Angeles from 1988 to 1990. He did not indicate on this form that he lived in the United States prior to 1988. Further, though the applicant does indicate that he lived in Junction, he states that he did so from 1990 to 2000. Therefore, this affidavit is found to be inconsistent with other evidence in the record, casting doubt on assertions made in the affidavit regarding the applicant's residence in the United States during the requisite period. Because this affidavit only pertains to part of the requisite period and because it contains

information that is not consistent with other evidence in the record, very little weight can be afforded to this affidavit in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

Document showing birth:

- A photocopy of 1983 births in Texas showing that a [REDACTED] was born on July 14, 1983 and that her father was [REDACTED] and her mother was [REDACTED]. Here, the applicant did not provide a birth certificate associated with [REDACTED] that would conclusively link the birth of this child with the applicant or show that the applicant was present for her birth in the United States. As was previously noted, the applicant indicated on his Form I-687 that he began residing in the United States in 1988. Therefore very little weight can be afforded to this document in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

While it is noted that the applicant has submitted an employment verification letter from [REDACTED], this letter pertains to the applicant's employment from 1991 to 1998. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because this letter from [REDACTED], Inc. verifies the applicant's presence in the United States subsequent to the requisite time period, it is not relevant evidence for this proceeding.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, supra.

Here, as was previously noted, affidavits were not consistent with what the applicant showed on his Form I-687, casting doubt on the credibility of statements contained within these affidavits regarding the applicant's residences in the United States during the requisite period.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner 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 petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States since 1988. He showed that he has never worked in the United States. Additional evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant lived at an address in Junction Texas. However, this is not consistent with what he showed as an address of residence on his Form I-687. Further, the dates associated with the

applicant having lived at the address in Junction Texas in affidavits submitted by him were not consistent with dates he associated with having lived in Junction, Texas on his application.

In denying the application the director noted the above, and the fact that the affidavits submitted by the applicant did not offer evidence that the applicant entered the United States before 1982.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M-*, *supra*.

However, here, the director correctly found that the affidavits did not pertain to the duration of the requisite period. As was further noted by the AAO, these affidavits are not consistent with other evidence in the record. Therefore, the affidavits and other evidence previously noted submitted by the applicant in support of his application do not satisfy the applicant's burden of establishing, by a preponderance of the evidence, that he resided continuously in the United States for the duration of the requisite period.

On appeal the applicant attempts to explain these contradictions. Though he previously submitted a record of birth for a child born in 1983, he states that he has five children, two of whom were born in the United States in 1991 and 2002. He does not refer to the child born in Texas in 1983 or provide other information regarding these children.

The applicant indicates that he is traveling to Houston to gather more evidence, which he will forward along with his statement. It is noted here that more than one (1) year after the applicant's form I-694, Notice of Appeal was received by the Service no such evidence or statement has been received.

He furnishes a new affidavit from [REDACTED] who states that the applicant is his friend who lived with him at [REDACTED] in Houston, Texas from January 1980 until October of 1983. [REDACTED] goes on to say that the applicant worked with him at the Houston Astrodome from 1980 until 1983. With this affidavit, the affiant states that he is including his identification card he used to enter the Astrodome from 1980 to 1983. It is noted here that he included his resident alien card, but not his Houston Astrodome identification with this affidavit. It is further noted here that the applicant did not previously indicate that he ever lived in Houston, Texas on his Form I-687 or in other evidence submitted with his application. Therefore, because this affidavit contains information that is not consistent with what the applicant showed on his Form I-687 and because it does not pertain to the duration of the requisite period, very minimal weight can be afforded to this affidavit in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

The applicant also submits a photocopy of the front and back of a card showing the name [REDACTED] who has the applicant's date of birth and lives at [REDACTED], Houston, Texas. This identification card states it is "Universal Identification." It is not clear who issued this card or what its date of issue is. It is noted that the applicant has not previously indicated that he has ever used the middle name [REDACTED]. Because this card shows a name that the applicant has not previously indicated he has used and because there is no date associated with the card, it can be afforded no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

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 individuals that conflict with what he showed on his Form I-687.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted five (5) affidavits, and evidence that a child was born to an individual named [REDACTED] as corroborating evidence of his continuous residence during the requisite period to satisfy his burden of proof. However, these documents do not prove, by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of 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 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 that the applicant has submitted forms and affidavit that are not consistent regarding his addresses of residence and his employment during the requisite period 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.