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



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-04-268-10421

Office: LOS ANGELES

Date: DEC 03 2008

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. 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.

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. The decision is now before the Administrative Appeals Office 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 noted in her decision that the applicant testified under oath during his interview with an immigration officer concerning his I-485, Life Act Application that he left the United States in 1980 and didn't return to the country until 1982. The director also noted that the evidence of record was inconsistent with the applicant's statements made during his interview. The director further noted that the receipts submitted by the applicant did not bear his name, and that his evidence overall lacked credibility. The director denied the application finding that the applicant had not met his burden of proof and that he 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 either the immigration officer misunderstood him during his interview or changed what he had said during the interview with respect to his absence from the United States. He further asserts that he entered the United States in 1980, then left the United States, and returned to the country in 1981. The applicant does not submit any evidence on appeal.

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) 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.

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.2(h)(1).

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).

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 of proceeding shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS), on June 24, 2004. The applicant indicated at part # 32 of the Form I-687 application where absences from the United States were to be listed, and during his interview with immigration officers on June 5, 2006, that he left the United States and traveled to Mexico in June of 1982, in September of 1984, and from December 10, 1987 to January 6, 1988. Although the applicant claims to have been continuously present in the United States since 1981, he has failed to submit documentation sufficient to support this claim.

The applicant submitted the following relevant attestations as evidence:

- A fill-in-the-blank letter from [REDACTED] in which he stated that he employed the applicant as a gardener from May of 1980 to September of 1982.
- A fill-in-the-blank letter from [REDACTED] in which she stated that she employed the applicant as a gardener from November of 1982 to December of 1984.
- A fill-in-the-blank letter from [REDACTED] in which she stated that she employed the applicant as a farm laborer from December 19, 1987 to April 5, 1988.

These letters do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the applicant's place of residence during his employment period, the periods of layoffs, or whether the information concerning the applicant was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, payroll records, W-2 Forms, certification of filing of federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarants. Because the declarations do not conform to regulatory standards, they can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following attestations as evidence:

- A fill-in-the-blank letter from [REDACTED] in which she stated that the applicant lived with her at [REDACTED] Los Angeles, California from January of 1986 to December of 1991. This statement is inconsistent with what the applicant declared on his I-687 application at part #30 where he indicated that he resided at the above noted address from 1986 to 1997. Because this declaration is inconsistent with what the applicant has stated, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- Fill-in-the-blank affidavits from [REDACTED] and [REDACTED] in which they stated that they has known the applicant since 1980 and 1981 respectively, and that the applicant has lived in the Los Angeles, California area from 1980 to December of 1991.

Here, the affiants fail to specify under what circumstances they met the applicant, the frequency with which they saw or communicated with the applicant, or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavits are significantly lacking in detail, they can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from the ESL Amnesty Coordinator from Gardena Community Adult School in which she stated that the applicant attended ESL classes from September 17, 1984 to February 1, 1985. Although this letter is some evidence of the applicant's presence in the United States in 1984 and 1985, it is not sufficient to substantiate the applicant's claim of continuous unlawful residence in the United States since before January 1, 1982.

The applicant also submitted copies of a receipt from Superfair Furniture bearing the last name of [REDACTED], a retail receipt dated July 29, 1988 and a blank envelope with a postmark date of August 19, 1981. Here, this evidence does not contain the applicant's full name and is therefore irrelevant to his claim of continuous unlawful residence in the United States. The applicant also submitted a copy of a handwritten box rent receipt dated July 12, 1983. This receipt is insufficient to establish the applicant's residence in the United States since before January 1, 1982.

In denying the application the director noted that the evidence submitted by the applicant was not credible and was insufficient to support his claim of eligibility for temporary resident status.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. The applicant does not submit any additional evidence.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. The employment letters submitted by the applicant do not conform to regulatory standards and other attestations are lacking in detail. The receipts submitted by the applicant do not establish continuous residence and do not clearly identify the applicant by name. Therefore, it cannot be concluded that the applicant resided continuously in the United States for 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 the applicant's reliance on documentation with minimal probative value, 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.