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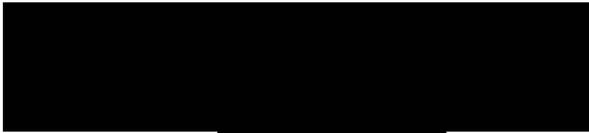
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



MSC 06-101-14321

Office: LOS ANGELES

Date:

DEC 08 2008

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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 District Director, Los Angeles. 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. The director denied the application, finding 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, specifically stating that at the time of an interview with an immigration inspector in 2001, the applicant stated under oath that he had resided in the United States for 13 years.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period.

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 245(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 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

On May 1, 2003, the Los Angeles Police Department arrested the applicant and charged him on two counts: a violation of section 2002 (a) of the California Vehicle Code (VC), *hit and run/property damage*; and a violation of section 2001 VC, *hit and run/death or injury*. On September 10, 2003, the applicant was convicted on the first count and the second count was dismissed. Docket #3VN02550. This single misdemeanor conviction does not make the applicant ineligible for adjustment to temporary resident status.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation 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 affidavits of relationship written by friends and family, envelopes postmarked during the requisite period, affidavits of employment, an affidavit from a Qualified Designated Entity (QDE), a California Identification Card issued to the applicant, and photocopies of invoices and receipts that indicate they were issued to the applicant during the requisite period. Additional 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 AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits and declarations from [REDACTED] and [REDACTED] state that they have known the applicant since 1981 and those from [REDACTED]

and state that they have known the applicant since 1985 and 1984 respectively. All affiants and declarants speak of the applicant's moral character. These affidavits and declarants fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period, as they do not state when or where they met the applicant or whether they met him in the United States and none state that they know that the applicant resided continuously in the United States for part or all of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant also submitted an employment statement¹ from his alleged former employer, Frida Seyfarth.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

However, this employment statement is of little value because, while it attests to the applicant's employment from 1983 to 1984, the declarant does not state how she was able to verify the applicant's dates of employment. She further does not provide the applicant's address of residence when she was working for her. Because of these deficiencies with regards to the regulatory

¹ This statement is made on a sales slip and is dated May 7, 1987.

requirements found in at 8 C.F.R. § 245a.2(d)(3)(i), this statement can be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition to this employment statement, the applicant has submitted a document which indicates that he worked for 46 hours for [REDACTED] from July 13 to July 19 in 1985. However, upon review of the record, the AAO found that on January 4, 1988 in the District Court of the Southern District of California, [REDACTED]² pled guilty to a violation of one count of 18 U.S.C. §§ 1001 and 1002, *aiding and abetting false statements and writings used in support of applications*. On April 10, 1990, [REDACTED] also provided a voluntary sworn statement, in which he stated that the only work he performed in 1985 and 1986 relating to grapes was renting tractors to harvesting crews and then periodically maintaining the tractors. [REDACTED] also stated that he only employed 35 individuals in 1985 and 1986 and that each of these individuals was a legal resident of the United States. He went on to state that employment verification documents signed by him using the names [REDACTED] or [REDACTED] were "false, fictitious, and fraudulent." The existence of the statement from [REDACTED] casts grave doubt on the authenticity of the document signed by [REDACTED] submitted by this applicant.

The applicant has also submitted photocopies and original envelopes that bear postmark dates ranging from 1981 to 1988 and provide addresses that are generally consistent with addresses provided by the applicant as his addresses during the requisite period.

The record also contains a Form I-867AB Record of Sworn Statement in Proceedings. This sworn statement was taken from the applicant at the Los Angeles International Airport in December of 2001. Relevant to this proceeding, the applicant stated that at the time he provided this statement he had resided in the United States for 13 years, or for 12 years "with papers." This indicates that the applicant had resided in the United States since approximately 1988, which casts grave doubt on his current claim that he has resided in the United States since before January 1, 1982. Though the director informed the applicant of the existence of this sworn statement, he did not rebut its existence on appeal, nor did he provide any explanation that would serve to overcome this previous statement.

The inconsistency regarding when the applicant began to reside in the United States is material to the applicant's current claim that he began to reside in the United States in 1981.

The inconsistency regarding the applicant's start date to his residency in the United States was previously noted by the director. However, to date, the applicant has not provided an explanation for this contradiction. This contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence from [REDACTED] provided by the applicant is also not deemed credible, as previously noted and shall be afforded no weight. It is incumbent upon the applicant 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

² [REDACTED]

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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As stated previously, 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. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, when the evidence submitted by the applicant is considered as a whole, 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.