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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 06 095 14396

Office: LOS ANGELES

Date: DEC 22 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.


John 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 (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 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 denied the application, finding that 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. Specifically, the director stated that the applicant issued a sworn statement to a United States immigration officer on October 30, 2006 wherein he stated that he first entered the United States without inspection in 1981, and that he thereafter departed the country in May of 1984. At that time, the applicant traveled to Panama to visit family members, and then returned to the United States in September of 1990. The director determined that the applicant's absence from the country from 1984 to September of 1990 represented a disruption of the applicant's claim of continuous residence and that the applicant was, accordingly, not entitled to the immigration benefit sought.

On appeal, the applicant states that his sworn statement to a United States immigration officer on October 30, 2006 contained errors caused by his nervousness at his legalization interview, and the fact that English is not his first language. The applicant states that he did not depart the United States in May of 1984 as previously sworn to, but that he left the United States on only one occasion, that being for a visit in 1990 which lasted only 45 days. The applicant submits, on appeal, additional evidence to establish his continuous unlawful presence in the United States during the requisite 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.

The issue in this proceeding is whether the applicant (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 record contains numerous inconsistencies which have not been adequately explained in the record, and which call into question the reliability and sufficiency of all evidence submitted by the applicant. The following inconsistencies of record are noted, and are material to the applicant's claim as they have a direct bearing on the applicant's residency, whereabouts and activities during the requisite period:

- The applicant states on the Form I-687 that he resided in the United States from August of 1981 until the date of the application – January 3, 2006;
- The applicant states, on appeal, that he has been continuously resident in the United States from 1981 – 1990, except for a single departure to visit family in Panama for 45 days in 1990;
- The applicant states on the Form I-687 that he was outside the United States from May of 1987 until June of 1987 for a family visit;
- In response to the director’s Notice Of Intent To Deny Class Membership, the applicant states that he came to the United States in March of 1981, and left in February of 1984, thereafter returning in September of 1990. In support of this assertion the applicant submitted a copy of his Indian Passport (W483023 – issued August 16, 1984) with a visa obtained at the U.S. embassy in Panama on May 15, 1990, and an I-94 card dated September 9, 1990. The applicant states that during the period of May, 1987 – May, 1988, he was not in the United States, but in Panama. The applicant also submitted a visa rejection stamp from the U.S. Embassy dated April 4, 1988. This documentation clearly establishes that the applicant was outside the United States from during the requisite period for a period of time (at least four years) sufficient to disrupt the continuous unlawful resident requirement for the immigration benefit sought;
- The applicant gave a sworn statement to a United States immigration officer on February 3, 1993 wherein he states that he first entered the United States as a student “about 1985” in Miami. The applicant paid an attorney who obtained for him a fraudulent temporary resident card. The applicant states that the attorney, with the applicant’s knowledge, filed a fraudulent application for the applicant as an agricultural worker;
- The applicant issued a sworn statement to a United States immigration officer on October 30, 2006 wherein he stated that he entered the United States in March of 1981, and that he left the country in May of 1984 to visit family in Panama. The applicant states that he returned to the United States in September of 1990 with a visa.

The applicant submitted witness statements which state that the applicant has resided and worked in the United States continuously since 1981 and throughout the requisite period. The statements are not supported by other documentation and contradict the applicant’s own sworn statements.

The above noted inconsistencies of record are material to the applicant’s claim as they have a direct bearing upon the applicant’s whereabouts during the requisite period. 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 pointing to where the truth lies. Doubt cast on any aspect of the petitioner’s proof may 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, 591-92 (BIA

1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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.