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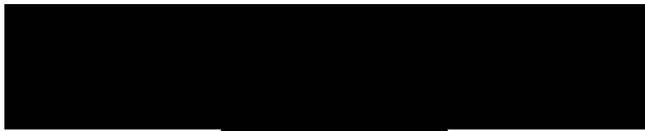
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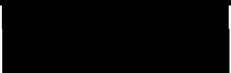
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: DEC 29 2008

SRC 01-161-54253

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 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, and 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 denied the application after determining 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 that the applicant stated under oath during his immigration interview on June 23, 2006 that he initially entered the United States in May of 1982. The director therefore concluded that the applicant had not resided continuously in the United States 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 asserts that he was nervous during the immigration interview and mistakenly stated that he had initially entered the United States in May of 1982. He further asserts that his employment history has been verified and requests that his evidence be deemed credible and should be reviewed on appeal. He provides no additional 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 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.

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 shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on April 16, 2001.

The applicant submitted copies of post marked envelopes that will be considered as some evidence of the applicant’s presence in the United States since 1988 but are not enough to establish his continuous residence in the country throughout the requisite period.

The applicant submitted the following attestations:

- A letter dated November 12, 1993 from [REDACTED] of [REDACTED] in which he stated that he has known the applicant since November of 1981 and that he temporarily employed the applicant as a laborer.

- A letter dated July 15, 2003 from the owners of Las Brisas Restaurante in which they stated that they employed the applicant from 1984 to 1987 and that they still keep in touch with him.

Here, the declarations are inconsistent with the applicant's statements on his previous Form I-687 application dated June 30, 1993, where he stated at part #36 that he was self-employed in construction from February of 1981 to October of 1986. Both the Forms I-687 indicate that the applicant was employed at Las Brisas Restaurant from November 1986 to December 1989. The inconsistencies call into question the credibility of the declarant's statement. 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. It is incumbent upon 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, 591-92 (BIA 1988). In addition, the declarations do not conform to regulatory standards for attestations by employers. Specifically, the declarations do not specify the address(es) where the applicant resided throughout the claimed employment period and the declarant David Sudduth fails to specify the dates of the applicant's employment. 8 C.F.R. § 245a.2(d)(3)(i). The declarants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant also provided the following affidavits:

- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant through a mutual acquaintance in 1981 and that their families have attended various activities together. He also indicated that the applicant resided in Gardena City, California from March of 1981 to April of 1985, in Redondo Beach, California from May of 1985 to June of 1988, and Lawndale, California from June of 1988 to May of 1990. This statement is inconsistent with the applicant's statement on his current I-687 application at part #33 where he failed to list any place of residence until June of 1989. The statement is also inconsistent with the applicant's statement on his I-687 application dated June 30, 1993 in which he indicated that he resided in Redondo Beach, California from October of 1986 to June of 1989.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since January of 1982 and that they met at the Saint Anthony of Padua church located in Gardena, California. She further stated that when they met, they both joined the youth group at the church and that they have since become good friends. This statement is inconsistent with the applicant's current Form I-687 application, at part #34 where he was asked to list all of his affiliations and associations with churches, religious groups and/or

community organizations he indicated his only religious affiliation was with San Francisco de Isis church in Huntington, California since June of 1997.¹

- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant at a restaurant where he was working and that the applicant has resided in Los Angeles County from 1980 to 1993.
- An affidavit dated August 1, 2003 from [REDACTED] in which he stated that he has known the applicant since February of 1982 and that the applicant lived with him and helped him with yard work and other odd jobs around the house.
- An affidavit dated July 31, 2003 from [REDACTED] in which he stated that he has known the applicant for over 20 years, and that he and the applicant have always visited and kept in touch with one another

Affiant [REDACTED] fails to demonstrate that the information he provided is based upon his first-hand knowledge of the applicant's residence during the requisite period. Affiant [REDACTED] fails to specify the address where he and the applicant lived or the duration of the living arrangement. Affiant [REDACTED] fails to specify when and under what circumstances he met the applicant and the applicant's place of residence during the requisite period. Because the affidavits are lacking in detail, they can be afforded only minimal weight in establishing the applicant's claimed continuous unlawful status in the United States for the duration of the requisite period.

In denying the application the director noted that the applicant had failed to provide the preponderance of the evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of being nervous during his immigration interview causing him to mistakenly state that he entered the United States in May of 1982. The applicant does not submit any additional evidence. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

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 affidavits submitted are lacking in detail, and therefore, are of little probative value. The employment letters are inconsistent with statements made by the applicant and fail to conform to regulatory standards for statements by employers.

¹ It is noted that the applicant submitted a letter from [REDACTED] of the Latinoamerican Old Catholic Church Missionary Diocese of St. Paul in Huntington Park, California in which he stated that the applicant has been a member in good standing at the Church since March of 1993

The AAO notes that although the applicant claims to have resided in the United States since he was 12 years old, he has provided neither school records nor immunization or medical records to substantiate such claim. He has also failed to provide any independent documentary evidence from or about any responsible adult or guardian sufficient to indicate the circumstances under which he lived in the United States during his childhood and throughout 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 upon attestations that are inconsistent with statements he made on his Form I-687 applications, and evidence with little 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.