

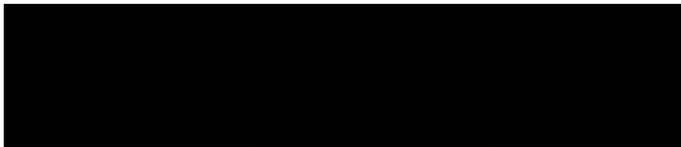
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

MSC-05-074-10054

Office: LOS ANGELES

Date:

JAN 09 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. 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.

A handwritten signature in black ink, appearing to read "D. King".

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) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles, California. 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, on December 13, 2004. 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.

On appeal, the applicant asserts his claim of eligibility for temporary residence status.

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)(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. See the CSS Settlement Agreement, paragraph 11 at page 6 and the 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.* 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.

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date of filing.

The record shows that the applicant submitted a Form I-687 application and Supplement, which he signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on December 1, 2004. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED], Mendota, California, as his address from April of 1981 to July of 1988. Similarly, at part #33, when asked to list all his employment in the United States, the applicant indicated that he was employed as an agricultural worker for [REDACTED] Farm Labor in Firebaugh, California, from May of 1985 to

October of 1985; and he indicated that he was employed as a landscaper in various places in California from November of 1985 to December of 1989.

The applicant initially submitted copies of his son's birth certificate issued in California, income tax documents, and pay stubs for the years 1994 through 2003. The applicant also submitted copies of his member identification card issued by [REDACTED] in June of 1990, and his California Identification Card issued in August of 1989. All of these documents are dated subsequent to the requisite period, and therefore, have no probative value and will not be considered as relevant in evaluating the applicant's eligibility for the immigration benefits sought.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestation:

- An affidavit dated November 11, 2004, from [REDACTED], president of [REDACTED] Farm Labor Contractor in which he stated that he employed the applicant as an agricultural worker from May 1, 1985 to May 1, 1986, for a total of one hundred five (105) days. He further stated that he was unable to provide payroll records because they were unavailable. He concluded by stating that he recognized the applicant because they had had personal contact with one another yearly. He also submitted a copy of a seasonal agricultural worker affidavit (Form I-705) that contained the information noted above. The statement made by the affiant is inconsistent with the applicant's statement on Form I-687, at part #33 where he indicated that he was employed by [REDACTED] as an agricultural worker from May of 1985 to October of 1985. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. Although the affiant attested to the applicant's residence in the United States, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it

can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director stated that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he resided in the United States in an unlawful continuous manner. The director continued by noting that numerous discrepancies, that had not been explained, had been found in the applicant's record. The director noted that the applicant submitted a Form G-352A, Biographic Information, on December 17, 1989, in which he stated that he began residing in the United States in August of 1989, and that he resided in Guatemala from 1966 to 1989. The director also noted that the applicant submitted a letter of employment in which [REDACTED] stated that the applicant worked for him from May of 1985 to May of 1986. The director further noted that the applicant swore under oath during his interview in July of 2005 with immigration officers that he first entered the United States in April of 1981, but that he listed his first residence on his I-687 application as Mendota, California, from April of 1985. The director determined that the applicant had failed to establish his claim that he had continuous unlawful residence in the United States since before January 1, 1982, through the date of filing.

On appeal, the applicant states that he is eligible for temporary residence status in that he declared during his July 2005 interview that he entered the United States in April of 1981, and was employed by [REDACTED] from November of 1981 through December of 1988, throughout the agricultural season. The applicant further states that [REDACTED] only estimated the number of days the applicant worked because it had been over 20 years since he had employed the applicant. The applicant states that the person who prepared his Form G-325 mistakenly declared his first entry into the United States to be December 17, 1989, but that in fact was the day he was apprehended by border patrol officers illegally entering the United States. The applicant further states that he indicated in part #16 of his Form I-687 application, that he last entered the United States in April of 1985, and that that was not meant to be an indication as to when he first entered the country. The applicant lists the following addresses as his residence: [REDACTED] Mendota, California from November of 1981 to December of 1988, and [REDACTED], Los Angeles, California, from July of 1986 to August of 1993. The applicant states that he left the United States traveling to Guatemala on three occasions: once in April of 1985 and returning in May of 1985, once in December of 1987 and returning in January of 1988, and once in August of 1989 and returning in August of 1989. The applicant indicates that he testified truthfully during his interview with CIS and that any existing discrepancies were minor and due to the lapse of time. The applicant does not submit any evidence on appeal.

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). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to before January 1, 1982, through the requisite filing period. In the instant case, the

applicant presents multiple conflicting statements and evidence. Because of the numerous discrepancies that exist in the record, independent objective evidence is required to support the applicant's claim of eligibility. There is nothing in the record to demonstrate or support the applicant's claim that he had made a mistake during his interview or on applications, and attempted to correct the same. Specifically, there has been no evidence provided to substantiate the applicant's claims concerning his employment with [REDACTED]. Neither has there been any independent documentation submitted to substantiate the applicant's alleged absences from the United States or his residence during his stay in the country.

The record of proceedings contains Form I-213, Record of Deportable Alien, that shows that the applicant was apprehended by the United States Border Patrol while attempting to enter the United States illegally at or near Jamul, California, on August 7, 1989, at 5am. The Form I-213 contains a sworn statement signed by the applicant in which he stated that he left Guatemala on July 28, 1989 by bus and traveled to the Mexican border, where he entered illegally. The applicant further stated that he arrived in Media Saba, Mexico on August 1, 1989, and took a train to Tijuana, Mexico, arriving there on August 4, 1989. From Tijuana, Mexico, the applicant stated that he traveled near to Jamul, California, where he was apprehended by border patrol officers on August 7, 1989. The applicant also stated that he came to the United States seeking employment to help support his family in Guatemala, and planned to return to his country after working a year in the Los Angeles, California area.

The applicant also submitted a signed Form I-217, Information for Travel Document or Passport, on August 7, 1989, in which he stated at part #11 that he attended Escuela Rural Mixta Amberes (a foreign school) from 1975 to 1981, and at part #12 that he attended Iglesia de Aldea Amberes Church in Guatemala from 1966 to 1989. The applicant also stated at part #13 of the application that his last permanent residence in the country of his citizenship (Guatemala) was Aldea Amberes Departamento Santa Rosa De Lima, Guatemala, from 1966 to 1989. Likewise, the applicant submitted a signed Form I-589, Request for Asylum in the United States on December 12, 1989, in which he stated in part #28 that he departed Guatemala on July 27, 1989; and in part #29 he stated that he crossed the Guatemalan/Mexico border afoot on July 28, 1989. When asked to explain what he thought would happen to him if he returned to Guatemala, the applicant stated in part: "the unknown armed civilian men are going to my farm town to ask for me. I was living in Guatemala in a conflictive area [where] are operating Communist Guerrillas."

As is noted by the director in his decision, the applicant submitted a Form G-352A, Biographic Information, on December 17, 1989, in which he stated that he began residing in the United States in August of 1989, and that he resided in Guatemala from 1966 to 1989. This information is in direct conflict with the testimony given by the applicant during his July 2005 interview and is not overcome by statements that he makes on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.

Any attempt 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 (BIA 1988).

The applicant claims on appeal that his places of residence in the United States included [REDACTED] Mendota, California from November of 1981 to December of 1988, and [REDACTED] Los Angeles, California, from July of 1986 to August of 1993. The applicant has failed to submit independent documentary evidence to substantiate this claim. It is further noted that his statement on appeal is in direct conflict with the addresses that he listed on his Form I-687 application for that same period, as noted above.

Although the applicant claims on appeal to have been employed by [REDACTED] from November of 1981 through December of 1988, he has not presented any independent objective evidence to substantiate that claim. The applicant indicated on his Form I-687 application, at part #33 that [REDACTED] had employed him as an agricultural worker from May of 1985 to October of 1985. In contrast, in a letter written and signed by [REDACTED] he stated that he employed the applicant from May of 1985 through May of 1986. The applicant has failed to present any evidence to explain these discrepancies. His statements alone will not suffice.

During the applicant's interview with immigration officers in July of 2005 he stated under oath that he left the United States once in 1987 and again in 1988. On the applicant's Form I-687 application he indicated at part #16 that he last came to the United States on April 25, 1985; and in part #32 he indicated that he was absent from the country once, from July of 1988 to August of 1988, when he left to be with his father in Guatemala who had had an accident. On appeal however, the applicant claims that he left the United States on three separate occasions: once in April of 1985 and returning in May of 1985, once in December of 1987 and returning in January of 1988, and once in August of 1989 and returning in August of 1989. In contrast, the applicant stated on the Form I-213 dated August 7, 1989, that he left Guatemala on July 28, 1989 and was apprehended in the United States on August 7, 1989. There has been no plausible explanation given for the numerous discrepancies in the record, nor has any evidence been provided to substantiate the various claims. Because the statements and evidence are inconsistent, and no independent objective evidence has been presented to explain the inconsistencies, doubt is cast on the assertions made as they relate to the applicant's residence in 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. *Matter of Ho, supra*.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. The applicant has failed on appeal to overcome the director's reasons for denial of the I-687 application. The affidavit from [REDACTED] conflicts with other evidence in the record and is significantly lacking in detail.

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 contradictory statements on his many applications and during his interview, 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 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.

It is noted that a Warrant of Deportation of the applicant from the United States to Guatemala issued on June 29, 1993, remains outstanding.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.