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U.S. Citizenship
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Services

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FILE:

MSC-06-031-11080

Office: LOS ANGELES

Date:

JUN 30 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 "Robert P. Wiemann".

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. 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 October 31, 2005 (together, the I-687 Application). 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 as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and statement written statement. In his statement, the applicant states that he was nervous during the interview and that he cannot understand why his “interpreter failed in his translation.” He also states that he worked in an undocumented status from 1981 to the present and has “nor records or taxes.” He adds that he “paid all [his] bills in cash and so [he has] no receipts. The applicant asks that his application be reconsidered. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). **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. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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 applicant 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 furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on October 31, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry,

the applicant listed his first address in the United States as [REDACTED], Compton, California, from March 1981 to March 1986. At part #33, he listed his first employer in the United States as Ray Auto in Compton, California from April 1981 to February 1988. At part #32, the applicant lists one absence from the United States. The applicant states that he visited Mexico from April 1987 to July 1987.

The applicant has provided several declarations; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; copies of the applicant's rent receipts; and a copies of the applicant's California driver's licenses issued on August 14, 1998 and on January 17, 2006. The applicant's birth certificate and California driver's licenses are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite time period. The following evidence relates to the requisite period:

- A notarized declaration from [REDACTED] dated October 10, 2005. The declarant states that he has known the applicant since 1981. The declarant states that he met the applicant "because at the time he had just arrived" in the United States and the applicant was his neighbor. The declarant also states that he would "always see [the applicant]" and they "became very good friends." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. Given the lack of details demonstrating the extent of the affiant's contacts with the applicant during the requisite period, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized declaration from [REDACTED] dated October 10, 2005. The declarant states that he has known the applicant since 1981. The declarant states that he met the applicant through "another friend who introduced him to [the applicant] and since that time [they] have been very good friends." The declarant also states that he and the applicant have been in "communication for a very long time." The declarant adds that he and the applicant "have worked together since the year 1994 to the present time in Nino's Auto Parts." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- An unnotarized declaration from [REDACTED] dated October 10, 2005. The declarant states that he has known the applicant since 1981. The declarant states that he remembers when he first met the applicant. The declarant also states that he and the applicant have become “very good friends” meeting in 1981 when the applicant was very young. The declarant adds that he has seen the applicant “frequently” since 1981 because their families are friends. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An unnotarized declaration from [REDACTED] dated October 10, 2005. The declarant states that she has known the applicant since 1981. The declarant states that she met the applicant “at a friend’s house” for a barbecue. The declarant also states that the applicant was at the barbecue “with other friends” and that after meeting she and applicant became “very good friends.” The declarant adds that in 1993, the applicant began working with her at Auto Parts and that she “sees him very often.” Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not specify how frequently she had contact with the applicant, what knowledge she has about the applicant’s residence during the requisite period, and how she arrived at that knowledge. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An unnotarized declaration from [REDACTED] dated October 10, 2005. The declarant states that he has known the applicant since 1981. The declarant states that the applicant was a client of “the mechanic auto shop where [the declarant] worked for many years since 1981.” The declarant also states that the applicant was “very young at the time” and that the applicant went to the “mechanic shop to [buy] a part for one of his family member’s car.” Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. Furthermore, the declarant does not specify the intervals between contacts with the applicant, and the declarant does not assert definite knowledge of the applicant’s residence during the requisite period and the means by which he acquired any such knowledge. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- Copies of the applicant's rent receipts dated September 2, 1983, November 1, 1985, and January 20, 1987. The rent receipts include the applicant's name. The AAO notes that receipts are inconsistent with the information that the applicant provided in the Form I-687. The first two receipts are for addresses not listed on the applicant's Form I-687 and the third receipt is for a payment after the Form I-687 states that the applicant changed addresses. Doubt cast on any aspect of the applicant'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 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although receipts and invoices for services and purchases may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in March 1981 without inspection. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the record of proceeding contains a sworn statement dated April 26, 2006 in which the applicant states that he "came to the United States on December 3, 1986 for the first time." The applicant wrote the statement in Spanish and the interpreter translated the applicant's writing into English. 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 visa petition. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director denied the application for temporary residence on April 26, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states that he was nervous during the interview and that he cannot understand why his “interpreter failed in his translation.” He also states that he worked in an undocumented status from 1981 to the present and has “nor records or taxes.” He adds that he “paid all [his] bills in cash and so [he has] no receipts. The applicant asks that his application be reconsidered. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the requisite period seriously detracts from the credibility of his 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 lack of credible supporting documentation, it is concluded that 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.