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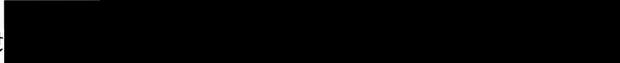
Office: LOS ANGELES

Date: **NOV 17 2008**

MSC 06-096-14045

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. 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. The director noted that the applicant had submitted fraudulent documents and therefore failed to meet his burden of proof.

On appeal, the applicant asserts that he has submitted sufficient documentation to establish his continuous unlawful residence in the United States for the requisite time period and that the fraudulent registered mail receipts noted by the director are legitimately post-marked.

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 applicant submitted the following documents as evidence:

- A copy of a USPS registered mail receipt number [REDACTED] with a standard revision date of October 1978 and a post-mark date of August 24, 1981;
- A copy of a USPS registered mail receipt number [REDACTED] with a standard revision date of June 1986 and a post-mark date of February 25, 1985;
- A copy of a USPS registered mail receipt number [REDACTED] with a standard revision date of June 1986 and a post-mark date of December 23, 1986; and.
- A copy of a USPS registered mail receipt number [REDACTED] with a standard revision date of June 1986 and a post-mark date of May 31, 1986.

On appeal, the applicant resubmitted copies of the USPS registered mail receipts post-marked August 24, 1981; December 23, 1986; and May 31, 1986. The applicant also submitted a copy of the USPS registered mail receipt number [REDACTED] but, with a standard revision dated of June 1980.

The photocopied receipt number [REDACTED] detailed above appears to have been altered as the original standard revision date seems to have been covered over and a new revision date has been inserted in its place. It is further noted by the AAO that on the registered mail receipt number [REDACTED] there is no address or zip code listed for the person who the mail was to be sent to. It further appears from the record that the post-mark date appearing on receipt number [REDACTED] is dated prior to the revision date. 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alterations of the documents noted above.

The applicant submitted copies of handwritten receipts dated January, February, and May of 1982; June and September of 1983; March of 1984, March of 1985, and April of 1987. The applicant also submitted copies of receipts dated November of 1986 and March of 1988. The copies of the receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 245a.2(d)(3)(F)(ii) states that additional documents such as receipts are acceptable documents, the regulations do not suggest that such evidence alone is sufficient to establish the applicant's qualifying continuous unlawful residence in the United States throughout the requisite period. The receipts may establish the applicant's presence in the United States on the date of the receipt, but do not establish the applicant's continuous residence throughout the period. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 245a.2(d)(5). It is noted by the AAO that none of the receipts are dated prior to January 1, 1982; and therefore, cannot support the applicant's claimed presence in the United States before that date.

The applicant submitted a copy of a receipt from Route & Receipt dated May 23, 1987. However, at the bottom right-hand corner of the receipt the copyright © date is printed as 1991. This inconsistency has not been resolved. *See Matter of Ho*, 19 I&N Dec. 582. The applicant has failed to provide a plausible explanation for this discrepancy.

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, and has also failed to provide a plausible explanation for the numerous discrepancies that appear throughout the record.

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 documents that appear to have been altered and that have 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.