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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: NOV 19 2008

MSC 05 138 10432

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:



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, New York. 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 February 15, 2005. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On February 7, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982 and thereafter resided continuously in the United States in an unlawful status for the duration of the requisite period. In response to the NOID, the applicant submitted affidavits and his own statement. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel provided additional evidence for consideration.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in two different locations in New York from 1981 to 1990. He indicated at part 33 of his Form I-687 application that he worked for Construction Company in New York as a painter from 1982 to present. The Form I-687 application at part 32 lists one absence from the United States for the applicant since his initial entry from August to September 1987.

In an attempt to establish entry into the United States and continuous unlawful residence in the United States before January 1, 1982, counsel provided multiple documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period. In the instant case, those documents are the affidavits from [REDACTED] the seaman's book submitted on appeal; [REDACTED] and his baptismal certificate submitted on appeal; [REDACTED]

On February 4, 2006, the applicant was interviewed in connection with his Form I-687 application. The applicant states that he first entered the United States from Canada without inspection in November 1981. The

director denied the application, finding that the affidavits did not contain identity documents of the affiants or evidence that they were in the United States during the statutory period, and did not sufficiently establish the affiant's relationship with the applicant. The director found no evidence that the employer of the beneficiary listed on the Form I-687 during the statutory period had ever existed. On appeal, the applicant submits copies of a seaman's book belonging to [REDACTED] and the baptismal certificate of [REDACTED] to establish their identities and presence in the United States during the statutory period.

The affidavit from [REDACTED] dated February 22, 2006 states that he has known the applicant since 1981, that the applicant entered the United States before January 1, 1982 and since then has been residing in the United States in an unlawful manner. The seaman's book establishes the affiant's identity but does not establish his presence in the United States during the statutory period. In his affidavit dated February 23, 2006, [REDACTED] stated that he has known the applicant since 1987. He also states that the applicant entered the United States before January 1982. In order to establish the affiant's identity and presence in the United States, the applicant submitted a baptismal certificate of [REDACTED] indicating his birth in New York on [REDACTED]. On his affidavit, [REDACTED] indicates that his status in the United States is a "US naturalized citizen." As his birth in the United States would establish his United States citizenship, it is unclear why the affiant identifies himself as a naturalized citizen. The identity document is not acceptable. 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 applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Neither affidavit contains pertinent knowledge regarding how the affiants acquired personal knowledge of the events. Neither affidavit contains sufficient detail to establish a relationship with the applicant spanning two decades. In the affidavit signed by [REDACTED], he has not explained how he acquired personal knowledge that the applicant entered the United States in November 1981 when he only met the applicant in 1987.

Other affidavits were executed by [REDACTED]. [REDACTED] affidavit states that he knows the applicant entered the United States without inspection in November 1981 but he does not state when and where he first met the applicant. The affidavit also states that the affiant has been in the United States since 1990. The affiant has not explained how he has personal knowledge of the applicant's residence in the United States since November 1991. [REDACTED] states in his affidavit that he knows that the applicant came to the United States on September 18, 1981 and that they lived together in New York from 1981 to 1990. The affidavit does not indicate the circumstances of their meeting or provide other details about their relationship. Further, the date of the applicant's entry in November 1981 conflicts with the testimony of the affiant that the applicant entered in September 1991.

The affidavits have confirmed neither the applicant's continuous residency in nor entry into the United States. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry and continuous residency in the United States since November 1981. The affidavits fail to explain how the affiants and the applicant developed and maintained a friendship. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The

affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits fail to establish the applicant's illegal entry into the United States prior to January 1, 1982 and his continuous unlawful residence in the United States for the duration of the requisite period.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affiant's affidavits do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of details and the inconsistencies that exist in the above noted evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affiant's affidavits while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.