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Services

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FILE:

MSC 05-018-22931

Office: LOS ANGELES

Date: NOV 24 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.


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 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. 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period and he submits 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.

The issue in this proceeding is whether the applicant has established 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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant's friends. Some evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

Affiant [REDACTED] submitted an affidavit in August of 2005 and a subsequent declaration that is undated. In her 2005 affidavit, she states that she met the applicant in December 1981 and that he has good moral character. In her declaration, she elaborates, stating that she met the applicant when he was selling personal organizers and toys on the street. She states that she bought an organizer from him in December 1981 and that she went to his home in Los Angeles at that time. She states that she has been friends with the applicant since then. Though the affiant submits proof of her presence in the United States prior to 1982, she does not state the frequency with which she saw the applicant in the United States after this first meeting. She further fails to state whether there were periods of time when she did not see the applicant.

Affiant [REDACTED] states that he has known the applicant since October 1981 and attests to the applicant's good moral character. Declarant [REDACTED] states that he knows that the applicant has resided in Los Angeles, California since September 1981 and that he and the applicant were absent from the United States from May 4, 1987 until June 2, 1987 because they went to Mexico together. However, neither [REDACTED] state where they first met the applicant or whether they first met him in the United States. Similarly, they do not state the frequency with which they saw the applicant during the requisite period. [REDACTED] does not state whether he knows if the applicant resided in the United States

for part of all of the requisite period. Therefore, his affidavit cannot be accorded any weight that the applicant resided in the United States during that time. While [REDACTED] states that he knows that the applicant resided Los Angeles for that period, his declaration is significantly lacking in detail, such that it can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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. None of these witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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 witness statements do not indicate that their assertions are probably true. Therefore, when considered both separately and collectively, they have little probative value.

The applicant has submitted statements from himself both prior to and with his appeal. Collectively, these statements assert that the applicant entered the United States in September 1981 when he was 15 years old and that he began working selling personal organizers on the street at that time. He states that because he was so young when he entered the United States, he was unfamiliar with tax laws and therefore he did not pay taxes until 1990. He states that he did not return to his country of origin, El Salvador, during the requisite period because of the war that was occurring there at the time.

The record also contains a Form G-325A Biographic Information that was submitted by the applicant in September 2002 when he applied for Permanent Resident Status and two Forms I-687. The applicant's first Form I-687 does not indicate when it was submitted, but it appears to have been submitted to establish class membership. The second Form I-687 in the record was submitted in October 2004, pursuant to the CSS/Newman Settlement Agreements. This shall be referred to as the, "current application."

The undated Form I-687 in the record indicates that the applicant first began working in the United States for Solis Fashion in February 1987. However, the applicant's Form G-325A in the record states that he first worked for HUIISH Detergents Inc. in Salt Lake City, Utah from June 1985 to October 1987. The Form G-325A also states that at that time, the applicant was residing in Los Angeles, California. Similarly, the applicant's current Form I-687 application states that the applicant worked for HUIISH Detergents Inc. in Salt Lake City, Utah from June 1985 until 1987 but resided on [REDACTED] in Los Angeles, California at that time. It is noted that the distance from the address the applicant stated he resided at in Los Angeles and Salt Lake City, Utah is more than 690 miles, casting doubt on the applicant's assertion that he worked in Salt Lake City while he resided in Los Angeles. The applicant's previously submitted and current Forms I-687 do not list employment during the requisite period that is prior to June 1985 or subsequent to October 1987. These

inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period.

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).

Therefore, because of the previously noted paucity in the testimony of the affidavits submitted by the applicant and because of the inconsistencies in the record, 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.