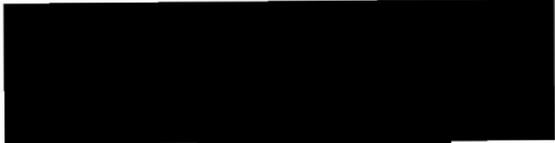


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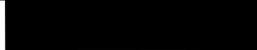
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: **NOV 25 2008**

MSC 06 060 18443

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 "John F. Grissom".

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 of the Los Angeles office. 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 the director failed to issue a Notice of Intent to Deny (NOID) to the applicant, as required by the CSS/Newman Settlement Agreements. The applicant asserts that the director's assessment that the applicant failed to establish his continuous residence in the United States throughout the requisite period casts doubt on the applicant's claim of class membership and, as a result, the director was obligated to issue a NOID pursuant to the CSS/Newman Settlement Agreements.

Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

Since the director did not deny the applicant's claim for class membership, her failure to issue a NOID to the applicant explaining the perceived deficiency in the applicant's claim of class membership is found not to have been in error. It is noted that establishing a claim of class membership involves demonstrating *prima facie* eligibility for temporary resident status. Paragraph 1, page 3 of the CSS Settlement Agreement and paragraph 1, page 6 of the Newman Settlement Agreement. Therefore, the director's finding that the applicant failed to establish his continuous residence throughout the requisite period by a preponderance of the evidence did not necessitate denial of the applicant's claim of class membership. The issue remaining for determination is whether the applicant has established that he resided in the United States throughout the requisite period.

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 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 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.

As stated above, the issue remaining for determination 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 a Form I-687 Application for Temporary Resident Status on November 29, 2005. At part #30 where applicants were asked to list all residences in the United States, the applicant indicated that he lived at an address in Modesto, California from 1979 to 1985 and in Los Angeles, California from 1985 to 1989. At part #32 where applicants were asked to list all absences from the United States, the applicant listed only one absence prior to the end of the requisite period, from April to May 1987. At part #33 where applicants were asked to list all employment in the United States, the applicant listed only odd jobs from 1981 to 1997. The applicant failed to provide employer names or work locations, although this information was requested. The applicant's failure to provide any detail regarding his employment during the requisite period casts some doubt on his claim to have resided in the United States throughout the requisite period.

The record also includes a Biographic Information Form G-325A signed by the applicant on April 27, 2001 under severe penalties for knowingly and willfully falsifying or concealing a material fact. The applicant indicated on the Form G-325A that he was married in Mexico on December 31, 1981. The applicant failed to indicate that he was absent from the United States in December 1981, although he indicated on the Form I-687 that he began residing in the United States in 1979. The applicant's failure to indicate that he was in Mexico in December 1981 casts serious doubt on his claim to have resided in the United States throughout the requisite period.

The documentation that the applicant submitted 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 friends and family, and an affidavit of employment. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The notarized declaration from [REDACTED] of JS Farms states that the applicant was an employee of JS Farms from 1981 to 1988. The declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether Citizenship and Immigration Services (CIS) may have access to the records. In addition, this declaration is inconsistent with the applicant's Form I-687, where he indicated that he performed odd jobs during the requisite period but failed to list JS Farms as an employer or state that he maintained continuous employment with one employer throughout the requisite period. Considering these deficiencies, this declaration will be given only nominal weight toward determining whether the applicant resided in the United States throughout the requisite period.

The sworn declarations from [REDACTED] and [REDACTED] all contain statements that the affiants have known the applicant for many years and that they attest to the applicant having resided in the United States during the required period. These

affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of 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 the witness statements provide sufficient concrete information, specific to the applicant and generated by the asserted associations with him, to 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. Many of the witnesses did not have first-hand knowledge of the applicant's residence in the United States, because they were living outside the United States during the requisite period. Others claimed to have worked or resided with the applicant in the United States during the requisite period, but failed to provide detail including employer names or residential addresses. None of the witnesses stated whether or not the applicant was absent from the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value. In addition, because of their failure to provide any information regarding the applicant's absences from the United States during the requisite period, the witness statements fail to overcome the inconsistencies in the applicant's statements with respect to his absences from the United States.

The contradictions in the record 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. 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, 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.