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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

OCT 30 2008

MSC-05-011-10067

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 if your case was remanded for further action, you will be contacted.


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. The director denied the application and 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. Specifically, the director did not find the earnings record information from the Social Security Office and pay stubs credible. The director also noted that employment dates, names of employers, and the applicant's name found in the submitted evidence were inconsistent with the application and concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts he has provided sufficient proof that he entered the United States before January 1, 1982 and resided in continuous unlawful status since that date through the date of the application. Furthermore, he explains the inconsistency of his name by issuing two declarations under penalty of perjury that he used the name [REDACTED] to work and sign legal documents between 1981 and 1990.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and maintain 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 continuous physical presence 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 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).

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 here is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. In support of his appeal, the applicant submits the following evidence: a number of pay stubs and W-2s from various employers between 1983 and 1987; Social Security Earnings Record Information from 1983 to 2003; two letters and a notarized statement written and signed in 1987 by allegedly the applicant’s landlord and employers; four letter-affidavits issued in 2004 by neighbors and good friends; and two personal declarations under penalty of perjury.

While pay stubs and W-2s are some of the evidence specifically prescribed in the regulations, their probative value and credibility are subject to specific requirements. The regulations on past employment records specifically require the name of the employee and the name of the employer or other interested organization as well as relevant dates on the form or letter. 8 C.F.R. § 245a.2(d)(3)(i). In this proceeding, as noted by the Los Angeles District Director all of the pay stubs and the W-2s are not issued to the applicant’s name but instead to [REDACTED]. Careful examination of these W-2s indicates that they are also issued to someone who has a Social

Security number that is different from the applicant's.¹ Considering all of these deficiencies, the probative value of this evidence is very little and cannot be used to support the claim of continuous unlawful residence and physical presence during the requisite period.

Submitted along with a number of pay stubs and W-2s, the applicant produces a couple of Social Security Earnings Records ("the records"). The records contain the name and address of the applicant, his social security number [REDACTED], source of earnings, the year, and the amount of earnings. The records specifically show earnings from 1983 to 2003. Numerous inconsistencies are found when looking at these records carefully, however. For instance, the records show earnings from Tax Services of America, Inc. in 2003, but the applicant's I-687 does not reveal any employment with Tax Services of America. Also, the applicant submits a number of pay stubs and a W-2 from La Siesta Mexican Food intending to show employment from 1983 to 1986. However, the records show 1986 as the only year he received earnings at La Siesta. Additionally, the records show that the applicant receives earnings from Host International Inc. in 1984, but he fails to list it in his I-687 application. For three years, from 1987 to 1990, the applicant claims to have worked for Colima Restaurant in Santa Ana, but the records do not show Colima Restaurant at all. As a matter of fact, in 1987 and 1988, the records show that the applicant receives earnings from D&G Enterprises.² In 1994, the records indicate earnings from [REDACTED], a Texan employer, but the applicant fails to include it in his I-687 application. Furthermore, the records indicate that the applicant received earnings from [REDACTED] in 1983 and 1985, but the applicant's I-687 shows [REDACTED] employment from 1986 to 1987. Finally, in his Form I-687 the applicant claims to have worked for Playa Azul and Cocos Restaurant from 1981 to 1983, but the records do not reveal any earnings from these employers. Taken individually and considered under totality of the circumstances, these inconsistencies seriously undermine the credibility of the applicant's claim to continuous residence during the requisite period.

The 1987 letters and notarized statement also lack credibility and, therefore, have little probative value. First, the letters are made and addressed to [REDACTED], not the applicant in this proceeding. There is no indication in the letters that [REDACTED] is indeed the applicant in this proceeding. For instance, the letter from La Siesta Mexican food was signed by [REDACTED] on a regular piece of paper. It does not include the applicant's address at the time of employment, duties with the company as well as the title or position of the author. See 8 C.F.R. § 245a.2(d)(3)(i). While the letter from [REDACTED] was made on a business stationery with letterhead, it still lacks the details necessary as prescribed by the regulations, namely, applicant's duties and address at the time of employment, exact period of employment, whether

¹ The 1986 W-2 issued by La Siesta Mexican Food and [REDACTED] Plastering, Inc. to [REDACTED] both have a social security number [REDACTED]; the 1987 W-2 issued by D&G Enterprises to [REDACTED] bears a social security number [REDACTED]. The applicant's social security number according to his I-687 application is [REDACTED].

² A couple of pay stubs and a W-2 Form issued by D&G Enterprises in 1987 and 1988 to [REDACTED] are found in the evidence submitted.

or not the information was taken from official company record, and where records are located and whether the Service may have access to the records. *Id.* Finally, the notarized statement of the landlord has little probative value as well because the statement was made to [REDACTED] and there is no statement whatsoever showing that [REDACTED] is indeed one and the same as the applicant in this proceeding.

All four letter-affidavits produced in 2004 appear to have been executed on a form-letter. The affiants state that they have known the applicant since 1981 and have been good friends ever since. In determining the weight of an affidavit, the *Matter of E-M, supra* at 81, stated that it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Here, all four affiants claim to have known the applicant since 1981 and have been good friends ever since. However, these letter-affidavits have very little probative value because they do not offer any detail pertaining to: under what circumstances the affiants met the applicant; where they first met him, how they keep in contact all through these years and the frequency of their contact with him, as well as an address or addresses where the applicant resided in the United States during the requisite period.

In response to a request for additional evidence in 2005, the applicant asserted in a declaration under penalty of perjury, that he had used a second assumed name, [REDACTED], between 1981 and 1990. However, that declaration's credibility is questionable and probative value limited when looking closely at the applicant's Form I-687. Careful examination of his Form I-687 reveals that the applicant had not been known by any name other than [REDACTED].³ On appeal, the applicant submits a second declaration, asserting he worked under the name of [REDACTED] for a number of employers between 1981 and 1988. This second declaration is replete with inconsistencies. For example, there is no evidence such as pay stubs, employer's letter, or any other proofs to show that he was employed by La Playa Azul between 1981 and 1982. The only evidence pointing to the employment with La Playa Azul is his own declaration and one 2004 letter-affidavit,⁴ in which its probative value is very little and credibility limited due to lack of detail. The applicant's Form I-687 does not show employment by [REDACTED] in 1983 and 1985, nor does it show employment by Host International in 1984 as well as by D&G from 1987 to 1988. Moreover, the 1986 employment at [REDACTED] (La Siesta Mexican Food) is inconsistent with the evidence that the applicant has submitted, specifically, a number of pay stubs, a W-2, and a letter from La Siesta Mexican Food [REDACTED] all intended to show that he was employed there from 1983 to 1986. Due to these inconsistencies, this second declaration has no probative value and cannot be used to support the applicant's continuous unlawful residence claim during the requisite period.

³ On question 4 other names used or known by (including maiden name, if married), the applicant typed "None."

⁴ The letter-affidavit from [REDACTED] states that he was a regular customer of La Playa Azul where the applicant worked from February 1981 to around June 1982. No other detailed information is provided.

Although not raised on appeal, the applicant submitted photocopies of money orders made payable to Model Finance Co. and several receipts from Orange County Honda, intending to show that he was physically present in the United States in 1985 and 1986. Under the regulations, money orders and receipts can be used to support eligibility for the legalization program pursuant to INA § 245A. However, in this proceeding, the probative value of the money orders and receipts is very little because all of these documents bear the name of [REDACTED] not [REDACTED] the applicant, and there is no persuasive evidence that shows [REDACTED] is one and the same as the applicant.

Under the regulations, the most persuasive evidence to prove that [REDACTED] is indeed one and the same as [REDACTED], the applicant, is a document issued in the assumed name which identifies the applicant by photograph, fingerprint, or detailed description. See 8 C.F.R. § 245s.2(d)(2)(ii). However, the applicant did not submit such evidence.

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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In summary, the applicant has 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. There are too many inconsistencies in the application when comparing it to all of the evidence submitted by the applicant. Additionally, the applicant fails to prove by preponderance of the evidence that [REDACTED] is one and the same as the applicant.

In this proceeding, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and lack of specificities noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.