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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

LI

FILE: [REDACTED]
MSC 05 309 10576

Office: LOS ANGELES

Date: **APR 03 2009**

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the applicant submitted twelve affidavits and not just the eleven outlined by the director in her decision. Counsel forwards a notarized statement from [REDACTED] for consideration. Counsel states that in addition to the affidavits, the applicant also submitted statements of earnings, receipts for room rental in 1981 and 1982 and other miscellaneous documents which the applicant had been able to preserve in the last 25 years. Counsel argues that the denial is contrary to the terms and intent of the law and is an abuse of discretion and that the applicant has met his burden of proof.

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 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)(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) 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).

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.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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.

On appeal, counsel submitted a notarized statement that was not listed by the director from [REDACTED] who states he has known the applicant since early 1982. Considering that the affiant claims to have known the applicant for 21 years, this affidavit lacks sufficient detail to confirm that the applicant resided in the U.S. for the requisite period. On appeal counsel stated that in addition to the affidavits, the applicant also submitted statements of earnings, receipts for room rental in 1981 and 1982 and other miscellaneous documents which the applicant had been able to preserve in the last 25 years. None of the statements of earnings forwarded for the record fall within the requisite period and the room rental receipts do not show the applicant’s address. The receipts provide no helpful information beyond the amount the applicant paid monthly and the indiscernible signatures of the person who signed the receipts. The record contains a copy of the applicant’s Pasadena Community College student card that he states is for “years approx 1984/1985.” However, the card carries no date.

On his Form I-687, the applicant stated his first residence since his first entry was in Pasadena, California in 1982. However, in one of the declarations submitted by the applicant, [REDACTED] stated that know that the applicant had lived in the United States from at least 1980, and that he first met him in West Covina, California, in February 1980. On his Form G-325A, Biographic Information, that the applicant signed on May 29, 2003, he stated that he lived at [REDACTED] in Pasadena, California, from 1981 until May 29, 2003. However, on his Form I-687, he indicated that he lived at that address from 1999 until August 5, 2005. Additionally, on his Form I-687, he states that his only absences from the United States after his first entry in November 1981 were in December 1982, October 1985 and in August 1987, and that he returned in the same month each time. However on his Form G-325A, signed May 29, 2003, he stated that he was married in Mexico on March 9, 1987. The inconsistencies concerning the applicant’s statements on the Form I-687 cast doubt on his claim that he resided continuously in the United States during the requisite period.

It is noted that absent evidence to the contrary and given the fact that the applicant was married in Mexico, he was probably residing in that country at the time of the conception of his son born in Mexico on January 17, 1988.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant asserted residential history and absence information on his I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

It is noted that on August 27, 1990, the applicant was convicted by a Judge of the Municipal Court of Los Angeles – Van Nuys Judicial District, County of Los Angeles, State of California of driving while having a 0.08 or higher blood alcohol level, a violation of Vehicle Code (VC) Section 23152(b), a misdemeanor. () On August 13, 1992, the applicant was convicted by a Judge of the same court of a violation of another violation of VC Section 23152(b), a misdemeanor. ()

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.