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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC-04-307-11893

Office: LOS ANGELES

Date:

AUG 07 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:

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 if your case was 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 (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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since before January 1, 1982.

On appeal, the applicant asserts he has provided sufficient credible evidence to show that he entered the United States before January 1, 1982 and has thereafter resided in a continuous unlawful status until the date he filed or attempted to file the application for temporary resident status.

In adjudicating the appeal, the AAO identified multiple inconsistencies in the record concerning the applicant's identity. Thus, on May 29, 2009, the AAO sent a letter, requesting that the applicant submit additional evidence to reconcile the inconsistencies in the record relating to his various social security numbers and names he claims to have used to work in the United States during the requisite period. The applicant maintains in his response to the AAO's letter that he has met his burden of proving that he entered the United States before January 1, 1982 and has thereafter resided in the United States continuously until the date of filing the application. No additional evidence is submitted, however.

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, “[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 sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until the date of filing the application.

The applicant claimed during the interview that he had resided in the United States continuously since August 1980. He submitted the following documents as evidence of his continuous residence claim:

- a photocopy of his two most recent social security earnings statements issued by Social Security Administration (SSA);
- photocopies of various letters from Internal Revenue Service (IRS), Bank of America, ITT Hartford, St. Matthias church, Mr. [REDACTED] and Pacific Bell Telephone Company;
- a photocopy of an envelope bearing a 1981 post mark to the applicant from Holiday Inn;
- a photocopy of a receipt dated April 8, 1985 from Pacific Bell;

- a photocopy of a 1099-Int statement for the 1984 tax year from Bank of America;
- photocopies of rent receipts issued in 1980, 1981, 1982, 1983, and 1989;
- a photocopy of a 1099G, Report of State Income Tax Refund, issued by California Franchise Tax Board in 1985;
- a photocopy of an English as a Second Language (ESL) achievement certificate issued in June 1984; and
- photocopies of various pay stubs, W-2s, and tax returns for the years 1981 to 1988.

In adjudicating the appeal, the AAO observed that all of the W-2s and individual income tax returns that the applicant filed between 1981 and 1988 have a different social security number from the one shown on his two social security earnings statements. The AAO further noted that the applicant wrote “[REDACTED]” as his social security number on the Form I-485 Life Act application. Inconsistent with the Form I-485, the applicant listed “[REDACTED]” as his social security number on his 1987 Form I-687 application.

Additionally, the AAO found that the applicant used “[REDACTED]” as a name for employment and tax purposes during the critical period between 1980 and 1988. The evidence of record did not include a document or documents issued in the assumed name which identified the applicant by photograph, fingerprint, or detailed physical description.

The AAO sent a letter on May 29, 2009 requesting that the applicant provide additional evidence to establish that the applicant was in fact the same person as [REDACTED] and that he had used various social security numbers to work in the United States during the requisite period. The AAO also requested that the applicant outline the steps that he took to consolidate various social security numbers into one single earnings statement.

The applicant maintains in his response to the AAO’s letter that he has met his burden of proving that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until the date of filing the application. He submits no additional evidence or explanation to resolve the inconsistencies in the record as noted above. Nor does the applicant provide an explanation for how he consolidated his various social security numbers into one single earnings statement.

Upon review, the AAO finds that the W-2s along with the applicant’s individual tax returns for the years 1981 to 1988, the various pay stubs, and the social security earnings statements have no probative value as evidence of the applicant’s continuous residence in the United States since before January 1, 1982, as the applicant has failed in his response to explain the inconsistencies in his social security numbers and identities of record. The applicant has not established that he and [REDACTED] are the same person or that he used two different social security numbers. *See* 8 C.F.R. § 245a.2(d)(2).

The applicant submitted 1981 and 1988 W-2s from Catalina Lamp & Shade but failed to list his employment with the company on either of the Forms I-687. 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.

Further, the letter from IRS indicates that the applicant did not attempt to file 1981 taxes until 1988. None of the tax returns reflecting income during the requisite period are dated and have little value as contemporaneous filings.

The rent receipts do not overcome the inconsistencies in the earnings records. No corroborating evidence such as lease agreements or other documents have been submitted to verify whether these receipts belong to the applicant or if they were issued during the requisite period.

The 1984 1099G from California Franchise Tax Board is not probative as evidence of the applicant's continuous residence in the United States during the requisite period; it contains information inconsistent with the applicant's 1984 tax return. According to the 1984 1099G, the amount reported to IRS for the 1984 tax year was \$10,430.00. The applicant's 1984 tax return shows \$15,010.00. Further, the typing is smudged and appears in places to have been altered.

The letters from ITT Hartford, St. Matthias church and Pacific Bell Telephone Company all have minimum probative value as evidence of the applicant's continuous residence in the United States since before January 1, 1982. The ITT Hartford letter was dated August 28, 1985 and mailed to the applicant's 1987 address, based on the applicant's Form I-687. The letter from St. Matthias church contains no information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(v). The Pacific Bell Telephone Company letter was not typed on the company's letterhead. It includes no address or contact information of the author.

simply states in his letter that he has known the applicant since December 1981 but provides no detail as to how he first met the applicant in the United States, how he dates his acquaintance with the applicant, or where the applicant lived or worked during the requisite period. To be considered probative and credible, witness affidavits or statements must do more than simply state that an affiant or a declarant 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.

additionally states that the applicant was also known as . Under the regulations, the most persuasive evidence to prove that the applicant was indeed or 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). Neither Mr. nor the applicant submitted such evidence.

The AAO accepts the Pacific Bell receipt, the Bank of America letter, the 1984 1099-Int from Bank of America, the Holiday Inn envelope, and the ESL certificate as some evidence of the applicant's presence in the United States during the requisite period. Nevertheless, they are not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period.

The noted inconsistencies and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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.