

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

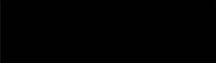


U.S. Citizenship
and Immigration
Services

L 1



FILE:



MSC-06-098-24990

Office: LOS ANGELES

Date:

FEB 04 2009

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, 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 maintain continuous unlawful residence in the United States during the requisite period. In denying the application, the director specifically referred to the applicant's testimony and statement made during his interview on November 3, 2006 in which he stated that he left the United States for three months in 1987.

On appeal, the applicant claims that the director misunderstood what he stated during the interview. The applicant asserts that he has never left the United States for three months in 1987 and further claims that since 1973, he has traveled three times outside the United States and always returned within 30 days. The applicant then notes that his total days outside the United States since 1973 is not more than 90 days or three months.

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).

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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be

accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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 (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 established by a preponderance of the evidence that he entered the United States before January 1, 1982 and has resided continuously in the United States since that date through the date he filed or attempted to file the application for temporary resident status.

During his interview in 2006, the applicant stated that he first entered the United States in July 1973. The record contains photocopies of the applicant's W-2s and individual income tax returns for 1981 and 1983. The applicant also submitted a photocopy of his California driver's license valid from September 13, 1984 until September 14, 1987. Along with the driver's license, the applicant furnished a receipt from the California Department of Motor and Vehicle (DMV) showing his residence at [REDACTED], Whittier, California, as of September 29, 1978. To further support his claim of continuous residence in the United States since 1973, the applicant submitted four letters from his former employers.

As noted above, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M--*, *supra* at 80. Viewed within the totality of the evidence, the applicant's W-2s along with his tax returns for 1981 and 1983 combined with the DMV receipt and the photocopy of his driver's license issued in 1984 establishes that the applicant has resided in the United States since 1978. However, the applicant's stay in the United States may not be continuous for reasons stated below.

The record contains the applicant's testimony and written statement in which he stated that he initially arrived in the United States in 1973 and left the United States for the first time in 1987 for three months. However, based on the Form I-687 dated July 18, 1990, the applicant reported three absences from the United States, in July 1985, October 1986, and May 1988, each lasted for a month or less. According to the legalization questionnaire dated July 19, 1990, the applicant went to Mexico on May 5, 1988 and returned to the United States illegally on May 20, 1990. Additionally, based on the applicant's Form I-687 dated December 29, 2005, under part #32 of the Form I-687 where the applicant has to list all of his absences from the United States since entry, he typed "don't recall." On appeal, the applicant states that he has never said that he left the United States for three months in 1987 and claims that the director misunderstood him.

A review of the 1990 legalization questionnaire further reveals that the applicant did not file an application for legalization/amnesty before May 4, 1988 because he "did not have the money to apply." In connection with his application for temporary resident status that he filed in 1990, the applicant was interviewed on July 12, 1993, at which time he stated that he failed to submit the application for temporary resident status during the original legalization period because he did not have sufficient documentation to establish his residence in the United States for the duration of 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 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. Here, the applicant has not submitted any evidence pointing to where the truth lies regarding his absences

from the United States during the requisite period and whether he filed or attempted to file the application for the benefit sought during the original legalization period, casting doubt to his credibility and claim that his presence and residence in the United States since 1973 is continuous.

The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide specific requirements as to what letters from past employers should contain. Letters from employers that do not comply with the specific requirements are not accorded as much evidentiary weight as letters that otherwise comply. The letter from [REDACTED] will not be considered since the employment period stated in the letter does not relate to the requisite period.

In his letter, [REDACTED] states that he was a plant manager at [REDACTED] Company where the applicant was employed from March 5, 1978 to July 7, 1979. This letter coupled with the Form W-2 that the applicant received from [REDACTED] and the individual tax return filed for 1981 establishes that he worked and resided in the United States from 1978 to 1981.

[REDACTED] in his letter claims to be the owner of [REDACTED] and the applicant's employer from February 1982 to December 1984. Although the letter fails to fully comply with the regulations, it has some evidentiary weight given that the applicant received a W-2 from the [REDACTED] and filed his tax in 1984 for the 1983 tax period. The letter is probative as evidence that the applicant lived and worked in the United States from 1983 to 1984.

[REDACTED] in his letter claims to have employed the applicant since January 1985. Other than this statement, however, the author fails to include the most critical information as prescribed by the regulations such as the applicant's address during the employment, his duties with the company, exact period of employment, and whether the information was taken from official company records or where records are located and whether USCIS may have access to the records. For these reasons, the letter lacks probative value and is not evidence of the applicant's residence or presence in the United States since January 1985.

The evidence in this case consists of a DMV receipt showing the applicant's residence in the United States as of September 29, 1978, a California driver's license valid from September 13, 1984 until September 14, 1987, and two W-2s from [REDACTED] and [REDACTED] along with proof of filing of the applicant's tax returns for 1981 and 1983. The evidence also includes three relevant employment letters mentioned above, which, when considered individually and in light of other evidence of record together, do not establish by a preponderance of the evidence that the applicant's presence and residence in the United States during the requisite period is continuous as defined by the regulations at 8 C.F.R. § 245a.2(h).

The inconsistencies noted in the record as well as 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 lack of credible supporting documentation, it is concluded that the applicant 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.