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U.S. Citizenship
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Services

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FILE:

MSC-06-091-12205

Office: NEW YORK

Date: FEB 05 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. 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 "J. 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, New York and 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted that the applicant had failed to adequately resolve the inconsistencies detailed in the Notice of Intent to Deny (NOID). In the NOID, the director noted that the applicant had failed to list his absences on his Form I-687 at question #32 or to explain the multiple absences from the United States during the statutory period that appeared as stamp dates on his passport. The director further noted that the affidavits submitted as evidence were not credible and lacked detail. The director also noted that the applicant's Form I-687 application at question #33 did not show any employment before 1986, and that the employment letter submitted on behalf of the applicant was lacking in detail and was not supported by documentary evidence. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that his testimony given was detailed and believable, and that the affidavits submitted are credible and amenable to verification. He does not submit any evidence on appeal.

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 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) 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to the United States Citizenship and Immigration Services (USCIS) on December 30, 2005.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 during the period that he resided in Astoria, New York. The affiant also stated that in 1993 he and the applicant resided together. Here, the affiant's statement is inconsistent with what the applicant stated on his Form I-687 application at part #30 where he did not indicate that he lived in Astoria until 1996. There has been no explanation given for this inconsistency.
- Affidavits from [REDACTED] in which she stated that she has known the applicant since 1986 and that she met him in New York at a book exhibit, and [REDACTED] in which she stated that she has known the applicant since 1987 and that the applicant is a friend of her son.

The affiants fail to specify the origins of their information or the frequency with which they saw and communicated with the applicant during the requisite period. There is no evidence to demonstrate the affiants' first-hand knowledge of the applicant's whereabouts or circumstances of his residency during the requisite period.

The applicant submitted an employment affidavit from the president of Travel Network in which he stated that he has known the applicant since 1987 when he began work with the agency as a free lance consultant in the company's tour department. The affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affidavit does not specify the applicant's dates of employment, the address(es) where the applicant resided during the claimed employment period, the number of hours the applicant worked, or any layoff periods during which the applicant was not employed. 8 C.F.R. § 245a.2(d)(3)(i). The affiant also fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted a photocopy of an enveloped postmarked May 26, 1988 bearing the applicant's name with c/o [REDACTED] at [REDACTED] in Hillsborough, California. This is inconsistent with the applicant's statement on his Form I-687 at part #30 where he indicated that he lived on [REDACTED] from 1981 to 1982. Based upon this discrepancy, the evidence can be afforded little weight in establishing the applicant's eligibility for the immigration benefit sought.

In denying the application, the director noted the discrepancies in the evidence submitted by the applicant and the inconsistencies in statements he made on his Form I-687 application.

On appeal, the applicant reasserts his claim of eligibility for temporary residence status. The applicant does not submit any new evidence.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the attestations submitted. The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to his employment history and numerous absences from the United States. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The affiant's statements are inconsistent with statements made by the applicant and are lacking in detail. The employment affidavit does not conform to regulatory standards.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above seriously detracts from the credibility of this 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 applicant's inconsistent statements and his reliance upon documents that do not conform to regulatory standards and are lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.