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U.S. Citizenship  
and Immigration  
Services

41

[REDACTED]

FILE: [REDACTED]  
MSC-06-083-11954

Office: LOS ANGELES

Date: FEB 24 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 (AAO) on appeal. The appeal will be dismissed.

Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982.

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 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. The director noted that the applicant was statutorily ineligible for the immigration benefit sought. The director also noted the discrepancies and inconsistencies in the statements made by the applicant and the declarants. The director also noted the discrepancies in the applicant's statements concerning his absences from the United States. 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, counsel asserts that the applicant did attempt to file his legalization application in 1988 and was turned away. Counsel also asserts that the declarants' statements are consistent with the applicant's testimony and statements and that minor discrepancies should not be a barrier to establishing the applicant's eligibility for the immigration benefit sought.

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) 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).

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 the current Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on December 22, 2005.

The applicant submitted the following attestations:

- A letter dated November 23, 2005 from [REDACTED] in which he stated that he has known the applicant for about 23 years and that during those years, he and the applicant worked on many projects together; an affidavit dated April 20, 2006 from [REDACTED] in which he states that he has known the applicant since December 1981 and that during the years he and the applicant have had the opportunity to work together on many projects. Here, the declarant's statements are contradictory.

A letter dated October 12, 2005 and an affidavit dated April 20, 2006 from [REDACTED] in which he stated that he has known the applicant since November 1981. He also stated that the applicant lived with him at his house from November 1981 to February 1982. He further stated that he and the applicant have worked together over the years on many different projects.

- A letter dated November 5, 2005 and an affidavit dated April 20, 2006 from [REDACTED] in which he stated that he has known the applicant since 1982 and that the applicant lived with him from February 1982 to April 1984. He also stated that he has had an opportunity to work with the applicant on many occasions.

The declarants fail to specify the address where the applicant lived during the course of their relationship with him. They also fail to specify the frequency with which they saw or communicated with the applicant during the requisite period. Although the declarants state that they have worked with the applicant on various projects throughout the years, they fail to specify the dates or the company or contractor that they worked for or how often they worked together. The applicant's testimony is inconsistent with what affiant Arroyo stated with respect to the length of time the applicant resided with him. There has been no explanation given for the inconsistencies. 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, 591-92 (BIA 1988). Because the declarants' statements are contradictory, inconsistent with statements made by the applicant, and lacking in detail, they can be accorded little weight in establishing that the applicant resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. Although counsel claims that the declarations are consistent with statements made by the

applicant and that any discrepancies found in the record are minor, she has failed to submit evidence to substantiate her claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant's initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established.

It is also noted that the applicant fails to address the issue of his absence from the United States in excess of the forty-five (45) days allowed for any single trip during the requisite period. The applicant testified under oath during his immigration interview that he left the United States for Mexico in February 1988 and remained in Mexico for forty-five days. In a declaration signed by the applicant and dated November 30, 2005, he indicated that he went to Mexico for two weeks in February 1988 and applied for amnesty in April 1988. On his Form I-687 application at part 32, the applicant stated that he was absent from the United States from February 1988 to April 1988. These unresolved inconsistencies cast doubt on the applicant's proof. 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, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 reliance upon evidence that is inconsistent with the applicant's statements, contradictory, and 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.