identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: SAN DIEGO Date: FEB 26 2009

MSC 05 322 10707

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 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, San Diego. 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. At the conclusion of the interview, the applicant was issued a request for evidence (RFE) asking for an affidavit of support from a sponsor with supporting items as required, evidence of residence and physical presence in the United States for the requisite periods, a copy of his marriage certificate, Form I-693 medical and medical supplemental and Form I-690, Application for Waiver of Grounds of Excludability. In response to the RFE, the applicant submitted declarations from his friend, [redacted], his spouse, [redacted] and his mother, [redacted] and other documentary evidence to establish his continuous residence in the United States for the requisite period. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that he resided in the United States for the requisite period and is eligible for temporary residence status under the CSS/Newman settlement.

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 245(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)(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 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). To meet his or her burden of

proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of declarations written by friends and family members and other evidence. The AAO will consider all of the evidence relevant to the requisite period.

During the I-687 interview, the applicant stated that he was a crewman and that he first entered the United States without inspection in 1978 by jumping ship in New Orleans, Louisiana. He stated he lived in Long Beach, California with from 1978 to 1988 and worked for him repairing and rebuilding boat engines.

The declaration submitted by contradicts the applicant's submissions. For instance, states that she met the applicant in 1978 when he was staying at her parent's home on and that he lived with her for a period of time in 1979 at her home at

Long Beach, California. The applicant states on the Form I-687 that he resided at North Paramount from 1979 until an unstated date and lists no addresses in the United States from 1980 – 2002. He does not indicate that he ever resided at the address. At his interview, however, he indicated that he lived with from 1978 – 1988. **Further,** also states that the applicant went back home to marry and later returned to the States where he lived with her parents at their residence at Long Beach, California. The applicant's failure to indicate that he ever resided at the address conflicts with the testimony of and with his own testimony given at his interview.

The inconsistencies regarding the dates the applicant resided with in the United States and/or her parents are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves this inconsistency. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant's spouse, , states in her declaration that she met her husband in 1980 at her residence in Colombo and that they married the same year in February. The applicant's spouse states that in 1980 her husband's ship reached the United States and he left the ship to reside in the United States. The applicant's I-687 application does not list an absence from the United States in 1980 to get married but during his I-687 interview he revealed that he left the United States in November-December of 1978 and went to Sri Lanka. He states that he returned to the United States by joining another crew on a ship and getting off in Long Beach in May 1980.

The applicant's mother, , states in her declaration that she remembers her son left the country in 1977 and in 1978, he decided to leave the ship and reside in the United States. also states that her son was residing in the United States with an American friend and his family, however, the name of the friend and family members are omitted from her declaration. states that her son visited Sri Lanka once or twice to get married, etc., and sent money and gifts from the United States, however the dates he visited Sri Lanka are not mentioned. She also mentions that he corresponded with her regularly yet no evidence of such correspondence was submitted as evidence of his residence in the United States.

The evidence provided fails to confirm the applicant's entry before January 1, 1982 and his continuous unlawful residence in the United States for the duration of the requisite period. On appeal, the applicant submitted two ticket stubs to a baseball game on August 28, 1979, however, there is no way of telling who bought the tickets and attended the game. The applicant testified at his

interview that he left the United States in late 1978 and returned in 1980, which would put him outside the United States at the time of the baseball game. The applicant submits one receipt dated July 31, 1983 for repayment of a loan but the receipt only bears the initials "BJ", and does not state the applicant's full name. Consequently, there is no way to confirm that this receipt actually was written out and given to the applicant.

The declarations do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States since 1978. declaration fails to explain how and the applicant developed and maintained a friendship. The dates of the applicant's departure and return to the United States have been omitted from s declaration and although she claims the applicant occasionally called and sent her greeting cards, she submits no evidence to establish the applicant's residence in the United States during the requisite period. None of the declarations indicate any other details that would lend credence to the applicant's residence in the United States during the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of detail in the declarations calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The declarations while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's continuous residence in the United States in an unlawful status since such date and through the requisite period.

Beyond the director's decision, this application cannot be approved for another reason. The record establishes that the applicant disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish for 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.1(c)(1)(i).

The applicant indicated at his I-687 interview that he was gone for one year and three months from January 1982 to April 1983 and from January 1985 to March 1985. By his own admission, the applicant had a break in continuous residence and is not eligible for status as a temporary resident. No explanation and evidence has been provided to show that the applicant's absences from the United States were due to emergent reasons. For this additional reason, the application may not be approved.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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 failed to establish that he had not disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988. 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.