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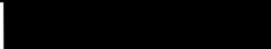


U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: LOS ANGELES

Date:

FEB 27 2009

MSC 06 101 31034

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:



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. Grisson, 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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In so finding, the director stated:

You were interviewed on October 23, 2006. During the time of your interview, you testified under oath that you entered into the U.S. for the first time in November of 1981. However, on your application there is no record of residence that you had resided in the United States since November 1981 as claimed. You testified that you left the U.S. to Mexico in December of 1986. However, on your application you reported no departure and no record of employment in the United States at all. You submitted letters of declaration from [REDACTED] and [REDACTED] attesting that you had resided in the U.S. since 1981 through May 1988. However, you testified that you met [REDACTED] for the first time in 1984 and [REDACTED] in 2003. You did not have the evidence to prove and to establish that you had resided in the United States during the requisite period.

On appeal, counsel asserts the interviewing officer did not allow the applicant's interpreter to participate at his interview. Counsel did not offer any evidence in support of his assertion. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The record reflects that counsel attended the applicant's interview. Counsel requests that the applicant's interview be rescheduled with the benefit of an interpreter. The applicant has had numerous opportunities to submit documentation to assist in the adjudication of his case. It is determined that another interview at this time would serve no useful purpose.

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)(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) 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).

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.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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.

The pertinent evidence in the record is described below

1. An “Affidavit of Witness” from [REDACTED] who states he has been working with the applicant in the auto mechanic and that he worked at [REDACTED] auto repair with him for about eight months in 1981. He further states that later, he worked with him at Master Repair Service for about four years, H&B for about five years, from 1989 until 1993 at Master Repair Service and from 1984 until October 21, 2006 for [REDACTED] Auto Repair.
2. An Affidavit of Witness from [REDACTED], an acquaintance, who states she has known the applicant since January 1981.
3. An Affidavit of Witness form [REDACTED] an acquaintance, who states he has known the applicant since February 1984.

4. A declaration from [REDACTED] who states the applicant has resided in the United States continuously since 1981.
5. A declaration from [REDACTED] who states the applicant has resided in the United States continuously since 1981.

On appeal, counsel asserts the interviewing officer did not allow the applicant's interpreter to participate at his interview. Counsel did not offer any evidence in support of his assertion. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

On his Form I-687, the applicant was required to show his most recent employment first and then all previous employment dating back to January 1, 1982. The applicant did not list any employment in the United States. Therefore, the employment information provided by the affiant listed in Item # 1 above is of no value because he contradicts the applicant's submission. Although the affiants in Items # 2 and # 3 indicate they have known the applicant since 1981 and 1984 and the declarations in Items # 4 and # 5 indicate the applicant has resided in this country since 1981, the statements do not supply enough details to lend credibility to an at least a 22 year relationship with him. For instance, the affiants and declarants do not indicate how they date their initial meeting with the applicant or how they maintained personal knowledge of the applicant's presence in this country.

On his Form I-687, the applicant was required to list all of his residences in the United States since his first entry, beginning with his present address and his absences from the United States dating back to January 1, 1982. He did not do so.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's residential history on his I-687 is nonexistent and the employment history that he provided cannot be compared with the employment information submitted in his behalf.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the

United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.