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20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: MSC 04 364 10120

Office: NEW YORK

Date: JAN 21 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:



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 "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, New York. 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. The director issued a notice of intent to deny (NOID) stating that the applicant had failed to provide credible evidence to establish that he first entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status for the duration of the requisite period. In response to the NOID, the applicant submitted four affidavits. The director denied the application finding that the applicant had not established by a preponderance of the evidence eligibility for temporary residence under section 245A of the Act.

On appeal, counsel states that based on the totality of evidence presented, the applicant's case should be approved.

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. Here, the applicant has failed to meet this burden.

The applicant’s Form I-687 application and his class membership determination form indicate that he entered the United States initially without inspection through Canada on September 20, 1980.

At part #19 of the Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents and Form EOIR-40, Application for Suspension of Deportation, where the applicant was asked the date he first arrived/entered the United States, the applicant indicated that he entered without inspection on January 17, 1990 at Seattle, Washington. The inconsistencies regarding the date and place the applicant initially entered the United States 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).

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided several affidavits. The AAO will consider all of the evidence relevant to the requisite period.

The affidavits from [REDACTED] and [REDACTED] all contain statements that the affiants have known the applicant was residing at [REDACTED] Fremont, California, from September 1980 to April 1985. The Malhi affidavit states that the applicant resided at [REDACTED] San Jose, California from May 1985 to December 1990. [REDACTED] states he is aware that the applicant left the United States and reentered in 1987. The name of the signatory on the affidavit dated February 16, 2006 attesting to the applicant's place of residence from 1982 to 1985 is illegible and will be given no weight. The affidavits neither confirm the applicant's entry into the United States prior to January 1, 1982 nor his continuous residency in the United States. The affiants fail to explain the circumstances surrounding their initial meeting and how they developed and maintained a friendship over the requisite period. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants fail to indicate details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

The affidavit from [REDACTED] and a second affidavit from [REDACTED] attest to the applicant working in the United States as a general truck helper since May 1985 till December 1990 when he moved to Fremont. The affiant has provided no business documentation regarding the employment of the applicant. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the statement does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

Upon review, the AAO finds that the affidavits do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not submit evidence to refute any of the director's concerns regarding the lack of evidence provided to prove his entry prior to January 1, 1982 and his continuous residency in an unlawful status throughout the requisite period. The affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period. Therefore, the affidavits have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of detailed evidence and inconsistencies noted call into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

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 is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Beyond the decision of the director, the AAO notes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which provides that an alien is inadmissible if he seeks, or sought, to procure a benefit by misrepresentation. Evidence of record indicates that the applicant purchased a work authorization document (I-688B) through an intermediary, by bribery of a public official. While this ground of inadmissibility may be waived, no evidence of record indicates that the applicant has sought or obtained a waiver of inadmissibility. As the applicant is inadmissible, he is ineligible to adjust to temporary residence under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). For this additional reason, the application may not be approved.

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