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U.S. Citizenship
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Services

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FILE:

MSC 05 222 10515

Office: LOS ANGELES

Date:

JAN 22 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.


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 sustained.

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 denied the application, finding that, due to discrepancies in the record, 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. In saying this, the director stated that the record indicated that the applicant's claimed places of training, employment and education overlapped during several years of the requisite period.

While it is noted that the director raised the issue of class membership in the decision, the application was adjudicated on the merits. Therefore, the director is found not to have denied the application based on a finding that the applicant was not a class member.

On appeal, counsel for the applicant asserts that the applicant submitted sufficient evidence to establish that he continuously resided in the United States for the requisite time period. Counsel also attempts to account for discrepancies noted by the director by confirming that the applicant was employed by more than one employer simultaneously during the requisite period. Counsel goes on to say that this should not negatively impact the applicant's credibility.

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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

On May 10, 2005, the applicant filed an I-687 Application pursuant to the CSS/Newman Settlement Agreements. The record includes but is not limited to the following documents that are relevant to his claim of residence in the United States during the requisite period:

- Affidavits from [REDACTED], the applicant’s uncle, and [REDACTED], the applicant’s sister, who attest to the applicant’s residence with them in Los Angeles. Collectively, the affidavits assert that the applicant resided with these two relatives for the duration of the requisite period. The record also contains additional declaration signed by husband and wife [REDACTED] and [REDACTED] who state that the applicant resided with both of them during the requisite period;

- Affidavits from [REDACTED] and [REDACTED] who state that they personally know that the applicant resided continuously in the United States for the duration of the requisite period;
- Employment letters from M and R Construction; both of which discuss the applicant's work, both paid and unpaid, with the company during and subsequent to the requisite period;

An employment affidavits and letters from [REDACTED] of La Fuente Restaurant and from [REDACTED] of Accurate Wire Products, who state that they employed the applicant from 1983 to 1985 and 1986 to 1987 respectively;

- Social Security Statements showing that the applicant had social security earned income in the United States beginning in 1984;
- W-2 Forms, which indicate that the applicant earned income in the United States when he worked for both Accurate Wire Products, Inc and also for Universal Building Maintenance in 1986 and for Accurate Wire, Inc. in 1987;
- A Form 1099G Report of State Income Tax Refund for 1987;
- A receipt from "The California Hospital Medical Center" from July 1987;
- Identification documents including:
 - A California Identification Card issued to the applicant 1980;
 - A student identification card issued to the applicant in 1984; and
 - A Blue Cross Insurance Card issued to the applicant in 1986.

Also in the file is a Form I-589, Application for Asylum and Withholding of Removal filed by the applicant in 1997, filed with a Form G-325A Biographic Information, and a Form EOIR 42-B. These forms consistently indicate that the applicant continuously resided in the United States since April 1980. Testimony taken from the applicant regarding his Form I-589 application indicates that the applicant stated that the purpose of this entry was to begin his residence in the United States. Similarly, the former Immigration and Naturalization Service (INS) issued a Notice to Appear (NTA) on a Form I-862 to the applicant on November 4, 1997. In this NTA, the former INS charged the applicant with being removable on the grounds that he entered the United States without inspection on or about April 15, 1980.

In her oral decision issued on March 26, 2001, Immigration Judge [REDACTED] also noted that the applicant conceded that he was removable on the basis that he entered the United States without inspection on or about April 15, 1980.

This indicates that the former INS has previously determined that the applicant entered the United States prior to January 1, 1982 and that he was charged with the applicant with removability on that basis.

On January 17, 2007, the director denied the application, stating that testimony from the applicant and evidence he submitted in support of his application indicated that his periods of employment, education and training overlapped. The director found that this was a discrepancy and therefore, found that the applicant was not credible. The director went on to say that this caused the applicant to fail to establish that he was eligible to adjust to temporary residence status pursuant to the CSS/Newman Settlement Agreements.

The director did not deny the application based on the applicant's failure to demonstrate class membership. Thus, the special provisions of the CSS/Newman Settlement Agreements which relate to cases in which the director finds that an applicant was not able to demonstrate class membership do not apply.

On appeal, counsel asserts that the applicant worked multiple jobs and was receiving training at the same time for part of the requisite period. She states that from 1983 to 1985 the applicant worked at two jobs and received training. Counsel further argues that the evidence submitted by the applicant is sufficient to satisfy his burden of proof.

After reviewing documents submitted with the applicant's Form I-687 application and other relevant documents in the record, the AAO finds that, though there are some inconsistencies in the record, the applicant has satisfied his burden of proof.

The applicant's testimony regarding his residence and his employment and education in the United States is generally consistent with the record. Given the passage of time, it is determined that the inconsistencies that do exist within the record are minimal and do not cause the applicant to fail to satisfy his burden of proof. Both the Forms W-2 in the record from 1986 and the Earnings Record Information from the Social Security Administration indicate that the applicant was employed by more than one employer simultaneously. Consequently, the applicant's statement on appeal that he worked for multiple employers during the requisite period is supported by the record. Though the director found that the applicant was not credible because of his periods of employment, training and education overlapped, the record does offer evidence that is consistent with the applicant's statement that he worked multiple jobs and attended school simultaneously during some years of the requisite period. The AAO does not find this fact to negatively impact the applicant's credibility.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on his I-687 Application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when

something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.