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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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L,

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

JAN 28 2009

MSC-06-089-11832

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 if your case was 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.

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 (together comprising the I-687 Application). The director denied the application and determined that, because the applicant was not “front-desked” during the original legalization period, he is statutorily ineligible for the benefit. The director further stated that the applicant had failed to meet the burden of proof by a preponderance of the evidence that he resided continuously in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant appeared to have submitted evidence that is inconsistent with the record, and thus is not credible.

On appeal, counsel for the applicant states that the applicant is a legitimate class member and asserts that the inconsistencies in the record are minor inconsistencies that do not materially affect his credibility and claim. Counsel further indicates that the applicant has submitted sufficient credible evidence to meet his burden of proof.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 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 (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 sole issue in this case is whether the applicant has submitted sufficient credible evidence to meet his burden of proof by a preponderance of the evidence establishing that he entered the United States before January 1, 1982 and has maintained continuous unlawful residence in the United States for the duration of the requisite period.

On appeal, counsel for the applicant claims that the director erroneously determined that the applicant is not a class member. Upon a *de novo* review, the director's conclusion that the applicant is not a class member shall be withdrawn. Here, the director adjudicated the Form I-687 application, thereby treating the applicant as a class member. Membership in a class by itself, however, does not automatically make the applicant eligible for temporary resident status pursuant to Section 245A of the Act. The applicant, as noted above, must show by a preponderance of the evidence that he entered the United States before January 1, 1982 and resided continuously in an unlawful status in the United States from that date until he filed or attempted to file the application for temporary resident status.

During his interview with a United States Citizenship and Immigration Services (USCIS) officer on November 29, 2006, the applicant stated that he has resided continuously in the United States since he first came in September 1981. The applicant's signed declaration states that he first

entered the United States in September 1980 and has been residing continuously in the United States since that date. **The applicant contends that this is a minor discrepancy.** To show continuous residence since 1981, the applicant submitted eight affidavits, two employment letters, a Social Security Earning Statement, and several W-2s from [REDACTED]

As noted above, the quantity of evidence is not the decisive factor in the search for the truth. The contents of the affidavits must be assessed and the quality of the evidence determined. *Matter of E-M-, supra.* Affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question have greater weight than fill-in-the blank affidavits providing generic information. In this case, [REDACTED], [REDACTED], and [REDACTED] all typed their affidavits on fill-in-the-blank affidavits, stating that they have known the applicant since 1981. [REDACTED] and [REDACTED] further claimed to be the applicant's brother and landlord during the requisite period. No contemporaneous documents, however, are submitted to show that the affiants resided in the United States during the period specified in their affidavits. The affiants fail to give details about their relationship with the applicant that would lend credibility to their statements. Their general assertions that they have known the applicant since 1981 and/or that the applicant resided with them during the requisite period is not probative as evidence of the applicant's continuous residence in the United States since September 1981.

The other four affiants also claim to have known the applicant since 1981. They all attest to the applicant being physically present in the United States throughout the requisite period. All state their birthplace and the address where they currently are residing and include a photocopy of their government-issued identification such as a certificate of U.S. citizenship, birth certificate, or a photocopy of their driver's license. The affiants further indicate their willingness to come forward and testify if necessary on behalf of the applicant, and the applicant additionally includes the current address and telephone numbers of the affiants where they can be contacted. One affiant in her affidavit specifically states she first met the applicant at her church in 1981, and she and the applicant see each other once a week at the church.

Upon review of the affidavits, the AAO determines that while the affiants have provided credible evidence as to their identities, their claims of long-term friendship and association with the applicant are not established with sufficient detail. For example, none of the affiants provide specific, personal knowledge of the applicant's whereabouts during the time period in question. Nor do they state with any specificity how they date their acquaintance with the applicant. Their general statements such as "I met [REDACTED] (the applicant) at [my] church, and we (the affiant and the applicant) see each other once a week at church" or "He (the applicant) comes over my house for all of my children's parties and graduation celebrations" are not persuasive as evidence that the affiants, by virtue of their relationship with the applicant, have knowledge of the applicant's continuous residence in the United States since September 1981. Because these affidavits are significantly lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The application of the preponderance of the evidence standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, *supra* at 80. Therefore, the burden is met when the evidence, viewed individually and within the totality of the evidence, establishes that the applicant's claim is probably true. In this case, the employment letter from [REDACTED] combined with the W-2 Forms and the Social Security Earning Statement establishes that the applicant resided continuously in the United States from September 1986.

To show presence and continuous residence in the United States between September 1981 and September 1986, the applicant furnished a letter from [REDACTED] in which [REDACTED], the manager, claims to have employed the applicant during that time as a busboy. However, when asked about his position at [REDACTED] during the interview, the applicant responded that he was a dishwasher. The director in her notice of denial noted that a busboy is different from a dishwasher, and thus the applicant's testimony is inconsistent with the evidence submitted. On appeal, counsel for the applicant claims that the discrepancy on the job description between the applicant's response at his interview and the employment letter is not substantial and does not amount to a material issue. Upon review, the AAO notes that the discrepancy between what the applicant indicated at his interview and what the employment letter states regarding his position at [REDACTED] is minimal. Nevertheless, the letter from [REDACTED] has limited probative value since it fails to include critical information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i), namely, the applicant's address at the time of employment, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records.

In denying the application, the director also noted inconsistencies in the record regarding the applicant's hire date with [REDACTED]. In a letter dated November 29, 2006, [REDACTED] indicated that the applicant has been working for [REDACTED] since August 16, 1985. When a USCIS officer called [REDACTED] to verify the information, she stated that she did not remember having written any type of employment letter but said that the applicant did not start working at [REDACTED] until 2005. On appeal, [REDACTED] submits a letter in which she states that the applicant has been working for [REDACTED] since August 16, 2005. Along with this letter, [REDACTED] also furnishes an affidavit indicating that she inadvertently made a typographical error in the applicant's hire date and that no impropriety should be inferred from her lack of recall in having written the letter because she is extremely busy managing over 65 employees of the company. Upon review, the AAO determines that the explanation from [REDACTED] is reasonable and that the inconsistencies in her testimony have no adverse impact on the applicant's credibility. However, the employment letter from [REDACTED] will not be considered because it postdates the requisite period.

Upon review of the evidence, the AAO finds that while the inconsistencies in the record as noted above do not adversely affect the credibility of the applicant, the applicant in this case has failed to submit sufficient credible and probative evidence to establish his continuous residence in the

United States for the duration of the requisite period. Other than affidavits, the record contains no contemporaneous documents or evidence establishing the applicant's presence or continuous residence in the United States from September 1981 to September 1986.

While the application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the affiants' general references to having known the applicant and regularly kept in contact with him since 1981 without sufficient detail describing the whereabouts of the applicant during the statutory period and without any corroboration from other contemporaneous documents are insufficient to support the applicant's claim of continuous residence in the United States throughout the requisite period. The letter from [REDACTED] does not meet regulatory standards and does not establish the applicant's employment from 1981 to 1986.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously detract from the credibility of his 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.

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