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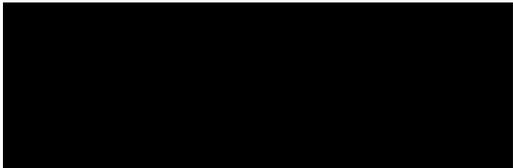
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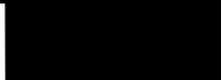


U.S. Citizenship
and Immigration
Services

LI



FILE:



Office: LOS ANGELES

Date:

JAN 29 2009

MSC-06-101-16950

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 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 determined that 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 doing so, the director stated that both the applicant's 60 day absence from June to July of 1987 and the lack of sufficiently detailed evidence caused the applicant to fail to meet his burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that though his 1987 absence occurred in June and July, this was only a three week absence, which spanned from the middle of June to the beginning of July. He also states that the director failed to accord sufficient weight to evidence he submitted in support of his application

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.

The issues in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 (2) has continuously resided in the United States in an unlawful status for the requisite period of time and (3) that he is otherwise admissible as an immigrant. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship. He also submitted his birth certificate as proof of his identity. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED] and [REDACTED] state that the affiants both met the applicant in 1991. Because these affiants met the applicant after the requisite period ended, they could not have personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period.

Affiants [REDACTED], [REDACTED]

[REDACTED] state that they first met the applicant in years spanning from 1970 to 1985 respectively. However, none of these affiants state when or where they first met the applicant or provide details regarding when they first encountered him in the United States. As [REDACTED] and [REDACTED] state that they did not enter the United States until 1984 and 1988, and [REDACTED] and [REDACTED] state that they did not meet the applicant until 1984, 1985 and 1985 respectively, these affiants could not have personal knowledge of the applicant's residence in the United States before those years. Further, none of these affiants indicate the frequency with which they saw the applicant in the United States during the requisite period.

None of the previously noted 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant's Form I-687 states that he resided continuously in the United States from February 1981 until the end of the requisite period. The Form I-687 further states that he had only one absence from the United States during the requisite period, from June to July in 1987, when the applicant traveled to Mexico. This form also states that the applicant was absent from July to August of 1988, when he went to Mexico. With the applicant's Form I-687, he also submitted his birth certificate and his certificate of marriage with their English translations. Both of these certificates state that the applicant parent's are [REDACTED], and [REDACTED] both Mexican nationals. These certificates state that the applicant is a Mexican national and that he was born in Puebla, Mexico.

However, upon *de novo* review of the record, the AAO found that the applicant has a second Alien file, bearing the number [REDACTED]. This file contains documents and testimony that are inconsistent with the information that the applicant provided when he applied for temporary resident status.

This second record contains a Form I-589 Request for Asylum in the United States, which the applicant signed under penalty of perjury in March of 1994. In this form, the applicant stated that he was a Guatemalan national who was born in Guatemala. The applicant also stated that in 1987 he belonged to a college student political group in Guatemala. He also provided details regarding

his abduction by armed men in Guatemala in 1988. This testimony is not consistent with the applicant's current claim that he continuously resided in the United States during the requisite period and that his only absences from the United States occurred for three weeks during June and July of 1987 and during the month of August in 1988, traveling to Mexico on both occasions.

In addition to making these statements, the applicant submitted a second birth certificate and its English translation. Though this birth certificate states that his father's name is [REDACTED] and his mother's name is [REDACTED], which are consistent with the applicant's parent's names as stated on his Form I-687, this birth certificate states that the applicant and his mother are Guatemalan nationals and that the applicant was born in Guatemala City, Guatemala.

It is not possible that the applicant was born both in Mexico and in Guatemala. Therefore, the fact that the applicant submitted two birth certificates, one which states that he is a Mexican national born in Mexico and the other of which states that he is a Guatemalan national born in Guatemala establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his eligibility for an immigration benefit in the United States. By engaging in such an action, the applicant has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the requisite period.

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 his application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO issued a notice to both the applicant and counsel on December 30, 2008, informing them that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant that, as a result of his actions, his appeal would be dismissed, a finding of fraud would be entered into the record, and the matter would be referred to the U.S. Attorney for possible prosecution. See 8 C.F.R. § 245a.2(t)(4).

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. He failed to submit any evidence addressing the discrepancies and contradictions that were found to undermine the basis of his claim of residence in the United States for the requisite period. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence. *Matter of Ho, supra*. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, as the record reflects that the applicant has made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

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