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U.S. Citizenship
and Immigration
Services

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FILE:



MSC-05-236-12048

Office: LOS ANGELES

Date:

JAN 30 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:

SELF-REPRESENTED

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). Along with the I-687 application, the applicant submitted a Form I-690, Application for Waiver of Grounds of Excludability. The director denied the I-687 application and determined that the applicant had not established by a preponderance of the evidence 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. Specifically, the director noted that the evidence submitted, a letter certifying the applicant's employment in the United States since 2005 and two envelopes bearing his name and showing a post office stamp from 1981, is not sufficient to support his claim that he has resided in the United States throughout the requisite period. The director further concurrently denied the applicant's waiver application and stated that there is no good cause to file the waiver.

On appeal, the applicant asserts that he has maintained physical presence and continuous residence in the United States since May 1981 and further submits a letter and five affidavits to prove his assertion.

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 issue in this case is whether the applicant has submitted sufficient credible evidence to establish by a preponderance of the evidence 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.

The record contains a letter, five affidavits, two employment letters, and two envelopes showing a post stamp from 1981. [REDACTED] wrote a letter stating that he worked together with the applicant at [REDACTED] located in Gilroy, California, since 1982. A review of the applicant's Form I-687, however, reveals that the applicant had neither worked at [REDACTED] Service nor lived in Gilroy, California. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. Here, the inconsistencies between [REDACTED]' letter and the

evidence of record seriously undermine the affiant's credibility and claim that he was the applicant's co-worker. No evidence of record is submitted to explain or reconcile the inconsistencies between the letter and the application; and for this reason, the letter has minimal weight as proof of the applicant's presence or residence in the United States since 1982.

As stated 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. Here, both [REDACTED] and [REDACTED] executed identical affidavits claiming that they know the applicant has worked and resided in the United States since January 1, 1981. However, no detailed information such as the applicant's address or addresses during the requisite period is included in their affidavits. Their general assertion that they have known the applicant since January 1981 is not probative as evidence of the applicant's continuous residence in the United States during the requisite period.

In his affidavit, [REDACTED] claims that he has known the applicant since November 1982. [REDACTED] further states that he and the applicant meet every two weeks. [REDACTED] asserts that from April 1993 to June 1998, the applicant resided at [REDACTED] in Riverside, California. However, the applicant listed a different city address during that same time period on his application. Here, the discrepancy between the affidavit and the application pertaining to the applicant's residence between 1993 and 1998 adversely affect [REDACTED] credibility and materially undermine his claim that he and the applicant meet every two weeks and that he has known the applicant since 1982. Further damaging the affiant's credibility is the lack of specificity as to how the affiant first met the applicant or how he dates his acquaintance with the applicant and when he and the applicant started to see each other every two weeks. The lack of detail and discrepancies regarding the events and circumstances of the applicant's residence in the affidavit are significant considering the length of the affiant's relationship with the applicant since 1982, and for these reasons, the affidavit has limited probative value as evidence of the applicant's continuous residence in the United States before January 1, 1982.

[REDACTED] asserts that she "has personal knowledge" of the applicant's continuous residence in the United States since 1982. [REDACTED] claims to have initially met the applicant in 1982 when she was working as a sales person at a swap meet, and since that first contact, she and the applicant visit each other often. Here, [REDACTED] fails to give details about her relationship with the applicant that would lend credibility to her statements. For instance, her affidavit does not specifically state how often she met with or talked to the applicant or provide other details about the relationship to establish the credibility of the assertions. Her statements such as "I have personal knowledge that the applicant has been in the United States since 1982" or "We (the affiant and the applicant) visit each other often" are not persuasive as evidence that the applicant has resided continuously in the United States since before January 1, 1982. Because the affidavit is seriously lacking in relevant detail, it lacks

probative value and has only minimal weight as evidence of the applicant's eligibility for temporary resident status.

The affidavit from [REDACTED] will not be considered since she claims to know the applicant after the requisite period. The letter from [REDACTED] also does not relate to the requisite period and will not be considered.

In his letter, [REDACTED] claims that he was a former general manager of [REDACTED] where the applicant worked as a farm laborer from January 1980 to April 1986. [REDACTED] states in his letter that all of his crews were paid cash and the company did not maintain proper employment records. He further claims that the company was closed in September 1987 and the information he provides here is based on his personal knowledge. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide specific requirements as to what an employment letter should contain. Letters from employers that do not comply with the specific requirements are not accorded as much evidentiary weight as letters that otherwise comply. In this case, the author of the letter fails to include the applicant's address or addresses at the time of employment and explain how he could provide specific information regarding the applicant's employment with [REDACTED] while no records were kept. Because this letter fails to include the most critical information about the applicant's employment as set by the regulations, it can only be accorded minimal weight as evidence of the applicant's claim of eligibility for the benefit.

The record also reflects that the applicant has three children who were born in Mexico during the requisite period. No reasonable explanation has been given to show how he fathered these children in Mexico when he was in the United States.

The two envelopes that bear a post stamp indicating 1981 are of little probative value as evidence of the applicant's presence in 1981 or his continuous residence throughout the requisite period. Upon review, the address on the envelopes is inconsistent with part #30 of the applicant's Form I-687 where he has to list all of his residences in the United States since his first entry. Additionally, the applicant testified at his interview that he left the United States for 30 days in April 1987, whereas his Form I-687 does not indicate any absence from the United States during the requisite period. Inconsistencies in the record must be resolved by independent objective evidence, as noted above. No evidence of record has been submitted to resolve the inconsistencies in the record.

The record reflects that the applicant was arrested by the Sheriff's office, Riverside, California, on July 7, 2001 and charged with driving under the influence of alcohol /drugs and driving without a license. No court dispositions of these arrests appear of record. As the appeal will be dismissed on other grounds, the issue of the applicant's conviction on these charges, if any, will not be addressed.

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 as well as inconsistencies

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 and inconsistencies in the record, 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.

Although not raised as an issue by the applicant, the director's decision to concurrently deny the I-687 application and the I-690 waiver application is withdrawn. Each application should be adjudicated separately since the applicant has the right to appeal from an adverse decision of either application. *Matter of P--*, 19 I&N Dec. 823, 824 (BIA 1988); 8 C.F.R. § 245a.2(k)(2). However, since the application for temporary resident status is denied for reasons stated above, it will not be necessary to adjudicate the waiver application separately in this case.

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