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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 088 10018

Office: LOS ANGELES

Date:

JUL 02 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 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 denied the application, finding that the applicant had not provided credible evidence to establish that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel faults the director for failing to issue a notice of intent to deny (NOID). However, according to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

On appeal, counsel explains that the evidence on record, in conjunction with the testimony at the interview and the newly submitted documentation clearly demonstrates that the United States Citizenship and Immigration Services (USCIS) failed to accord due weight and consideration to the material evidence in the applicant's case.

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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends. The AAO will consider all of the evidence relevant to the requisite period.

In the applicant’s class membership (LULAC) determination form, the applicant states that he first entered the United States without inspection in August 1981. The United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview the applicant claims he entered the United States without inspection on December 19, 1981 through San Ysidro. Therefore, there is a discrepancy as to the date the applicant first entered the United States.

The declarations from [REDACTED] and [REDACTED] state that they have known the applicant since 1981. The declarants also state that they know the applicant arrived in the United States before 1982 because they were coworkers at the [REDACTED] located in Augora, California, throughout the requisite period. The applicant's Form I-687 indicates that he stopped working at [REDACTED] in 1985; none of these applicants mentions this fact.

In his declaration, [REDACTED] states that he has known the applicant since 1981. The declarant also states that he knows the applicant arrived in the United States before 1982 because they were coworkers at [REDACTED] located in Laguna Niguel. The affiant's wife also states that the applicant and her husband were coworkers. However, the applicant never claimed on his Form I-687 application to have been employed by [REDACTED]. The applicant claims on his Form I-687 application to have been employed by [REDACTED] in Augora, California, from 1981 through 1985, and [REDACTED] - Interprises Drywall in Chino, California, from May 1985 to 1994. [REDACTED] states that he knows the applicant was in the United States from 1982 through 1988 because he would see him at social activities.

[REDACTED] and [REDACTED] state in their declarations that they first met the applicant in Los Angeles in 1981 and that they know the applicant arrived in the United States before 1982 having met him in 1981.

[REDACTED] and [REDACTED] state in their declarations that they first met the applicant on June 1, 1986, and in 1981, respectively. [REDACTED] states that he knew the applicant in Mexico, and that he later saw the applicant in the United States. They all state that they know the applicant was in the United States from 1982 through 1988 because they would see him at social activities

In his affidavit, [REDACTED] states that he has personally known and been acquainted in the United States with the applicant and has personal knowledge that the applicant resided in Los Angeles, California, from June 1981 to February 1990. The affiant does not give the circumstances surrounding their meeting besides stating that they are friends. [REDACTED] also states in a letter dated May 10, 1990 that the applicant was employed at D&G Enterprises taping drywall from May 1984 to the date the affidavit was signed. However, the applicant does not claim on his Form I-687 application to have ever been employed by D&G Enterprises. Further, 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 letter does not meet the requirements stipulated in the aforementioned regulation and conflicts with other evidence of record, it will be given no weight.

states in his affidavit that he knows the applicant entered the United States on August 1981 by crossing the border at San Ysidro. The affiant does not explain how he gained this knowledge and gives no other information about the applicant.

Apart from mentioning a few social activities they did together, the declarants provide no other information about the applicant. The affidavits and declarations lack the detail required to establish their credibility. The affidavits and declarations do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The declarants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

None of the declarations 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 declarations. 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. Therefore, the affidavits and declarations will be given nominal weight.

The applicant also submitted five stamped envelopes. However, the probative value of the envelopes is limited in that the postmark dates are not legible. Further, based on the applicant's Form I-687 application, only one envelope is addressed to a residence where the applicant claims to have resided on the Form I-687 application. The other envelopes are addressed to the applicant at residences he never claimed as his place of residence on his Form I-687 application for the requisite period. The applicant claims his place of residence was [REDACTED], Los Angeles, California, from August 1981 to 1989 on his Form I-687 application signed August 28, 1990 and June 1981 to September 1985 on the Form I-687 application signed on August 25, 2004. The stamped envelopes do not establish the applicant's continuous residence throughout the requisite period.

The inconsistencies in the evidence provided regarding the applicant's initial entry and continuous residence in the United States are material to the applicant's claim in that they have a direct bearing on the length of time the applicant actually resided in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls 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.

The AAO notes that the applicant was convicted of two misdemeanors, one of which was diverted. The applicant's criminal history in this case does not render him inadmissible to the United States.

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