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JUL 13 2009

FILE:

MSC 05 174 11593

Office: LOS ANGELES

Date:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, California, and 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he was not in Mexico to register the birth of his daughters. The applicant asserts that his father registered his daughters “under my name, he was the one who signed for me in order to do do [sic].” The applicant asserts that during the earlier years, he did not have any bills under his name as he was residing “at the address of the affidavits already sent from the person whom they knew that I was residing there.”

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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- Affidavits from his parents of Morelos, Mexico, attesting to the applicant’s departure from Mexico to the United States in November 1981; to his residence in El Monte, California at [REDACTED]; and to his absence from the United States from December 20, 1987 to January 10, 1988. The affiants indicated that all correspondence sent by the applicant were burned in a house fire in August 1986.
- Affidavits from family members and friends in Mexico, attesting to the applicant’s departure from Mexico to the United States in November 1981; to his residence in El Monte, California at [REDACTED] and to his absence from the United States from December 20, 1987 to January 10, 1988.
- Affidavits from [REDACTED], who indicated that he has known the applicant since 1981 and attested to the applicant’s residence in El Monte, California at [REDACTED]

The affiant indicated he resided at the same trailer park and was a coworker at Davenport Automatic Screw Machines. The affiant attested to the applicant's December 1987 to January 1988 absence from the United States. The affiant indicated that he has been very good friends with the applicant since 1981.

- Several photographs the applicant claimed were taken during the requisite period.
- An affidavit from [REDACTED], who indicated that he met the applicant in March 1982 while playing basketball in El Monte, California. The affiant indicated that he and the applicant saw each other frequently throughout the subsequent years.
- An affidavit from [REDACTED], who indicated that she has been acquainted with the applicant since November 12, 1981. The affiant attested to the applicant's residence in El Monte, California at [REDACTED]. The affiant indicated that she was the manager of the tenements where she and the applicant lived.
- An affidavit from [REDACTED] who indicated that he met the applicant in November 1981 and attested to the applicant's residence in El Monte, California. The affiant indicated that he and the applicant would go fishing every weekend at the beach and other places and has remained friends with the applicant since that time.
- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in Los Angeles County since 1981. [REDACTED] indicated that he has always been in communication with the applicant since his arrival in the United States and that the applicant would attend his family gatherings and other events throughout California. [REDACTED] indicated that she has always been in communication with the applicant since his arrival.
- Affidavits from [REDACTED] who attested to the applicant's residence in the United States since November 1981. The affiant indicated that he met the applicant while playing billiards and has remained in contact with each other since that time.
- An affidavit from [REDACTED], who attested to the applicant's residence in El Monte, California since November 1981. The affiant indicated that he met the applicant while fishing on the beach.
- A letter dated June 5 1993, from [REDACTED] of Karl's Auto Detail & Sales in El Monte, California, who indicated the applicant was employed from December 20, 1981 to November 15, 1987, and attested to the applicant's address at the time in 1993.

The applicant also submitted an affidavit from [REDACTED] in the Spanish language. However, the affidavit will not be considered as it was not submitted with the required English translation. Any document containing foreign language submitted shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

On February 28, 2007, the director issued a Form I-72, which requested the applicant to submit copies of his federal income tax returns, his children's birth certificates and school records, his marriage certificate, and evidence of his residence and presence in the United States during the

requisite period. Counsel, in response, submitted copies of affidavits that were previously provided along with:

- Receipts from Karl's Kustom Made Shoe and Banner Paint & Hardware dated in 1984 and from [REDACTED] dated in 1987.
- Copies of bills from Pacific Telephone issued in 1981.
- Copies of immunization records and birth certificates of his children who were born in Mexico on April 27, 1980, March 18, 1982, March 16, 1985, and May 12, 1988.
- Copies of Lucky Silver Bucks coupons, which list the Herald Express.
- A copy of his marriage certificate, which occurred on February 14, 1980.
- An affidavit from [REDACTED] who indicated that the applicant maintained residence at [REDACTED], Los Angeles, California from November 12, 1981 to June 7, 1983. The affiant indicated that she rented a room to the applicant in her two-bedroom apartment.

Counsel also submitted school records for the applicant's children, wage and tax statements, pay stubs and income tax returns that have no bearing in this proceeding as they serve to establish his presence in the United States commencing in 1991.

The director, in denying the application, noted that: 1) the receipts and telephone bills could not be used as evidence of the applicant's residence during the requisite period as his name was not listed on any of the documents; 2) the Lucky Silver Buck coupons had no information that would confirm the date they were issued or the applicant's residence; 3) the birth certificates of his daughters born on March 18, 1982, and March 16, 1985, reflect that the applicant was in Mexico to register their births on April 29, 1982 and May 23, 1985, and contradict the absence claimed on his Form I-687 application; and 4) the affidavit from [REDACTED] did not coincide with the residence claimed on his Form I-687 application and with the affidavits previously submitted from other affiants. The director concluded that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982.

On appeal, the applicant submits an affidavit with English translation from his father, who indicated that he took the decision to register his grandchildren's births and signed the birth certificates with his son's authorization. The father also indicates that his son did not return to Mexico until December 20, 1987.

The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

The photographs submitted have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.

The employment letter from [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiant also failed to 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.

The pay stubs submitted for Washington Fruit and Produce only serves to establish the applicant's presence in the United States *subsequent to* the period in question.

The applicant has not addressed the contradicting affidavit from [REDACTED], who indicated that the applicant resided in her apartment at [REDACTED] Los Angeles, California from November 12, 1981 to June 7, 1983. As previously noted, the applicant did not claim on his Form I-687 application to have resided at this address during the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. 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.