



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-076-10733

Office: LOS ANGELES

Date: **JUL 27 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 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, or *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 of the Los Angeles office 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 (LULAC) Class Membership Worksheet. The director denied the application, finding 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 time period.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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 physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) 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 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

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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, 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established 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 1982 and lived in an unlawful status during the requisite period consists of several witness statements and documents.

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. 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 record contains the affidavit of [REDACTED]. The affiant states that he has personal knowledge that the applicant has resided in the United States since 1980. The affiant states that he met the applicant when he and the applicant worked for the same company, but the affiant does not state when or where it was that he worked with the applicant.

The applicant has submitted the letter of [REDACTED] who states that she has known the applicant since 1984.

The record contains the letter of [REDACTED], who states that he has known the applicant since 1988. The affiant also states that he knows that the applicant has lived in the United States since 1981, but he does not state how he acquired his knowledge of the date when the applicant's residence in the United States began.

The applicant has submitted the joint statement of [REDACTED] and [REDACTED] who states that they know that the applicant has lived in the United States since 1982. However, the affiants do not state how they acquired their knowledge of the date when the applicant's residence in the United States began.

The record contains the letter of [REDACTED] who states that she has known the applicant since 1982, when she met him through a mutual friend. The affiant also states that she knows that the applicant has lived in the United States since 1981, but she does not state how she acquired her knowledge of the date when the applicant's residence in the United States began.

The applicant has submitted the affidavit of [REDACTED] who states that he has known the applicant since 1981, and knows that the applicant has continuously resided in the United States throughout the requisite statutory period.

The record contains the letter of [REDACTED], who states that he has known the applicant since 1987.

The applicant has submitted the letter of [REDACTED] who says he has known the applicant since 1981, when he met him at a party through a mutual friend.

The applicant has submitted the letter of [REDACTED] who states that he has known the applicant since 1986.

The record contains the letter of [REDACTED] who states that he met the applicant through a mutual friend in 1984. The affiant also states that he knows that the applicant has lived in the

United States since 1981, but he does not state how he acquired his knowledge of the date when the applicant's residence in the United States began.²

The applicant has submitted the letter of [REDACTED] who states that she has known the applicant since she met him in 1981 when he visited her house.

The record contains the letter of [REDACTED] who states that he has known the applicant since 1986.

The applicant has submitted an affidavit and a letter from [REDACTED] the applicant's godfather, who lists the applicant's residences during the requisite statutory period.

The record contains a fill-in-the-blank affidavit from [REDACTED] who states that he has known the applicant since 1981.

In addition, the record contains employment verification letters from [REDACTED], and [REDACTED].

The applicant has submitted a letter from [REDACTED] who states that he has known the applicant since 1983 and that the applicant has worked on construction projects in his home.

The record contains a letter from [REDACTED] who states that he has known the applicant since June 1987 when the applicant was working on a remodeling project in his home.

The applicant has submitted an affidavit and a letter from [REDACTED]. The affidavit of the affiant states that he has personal knowledge that the applicant resided in Valinda, California from February 1982 until July 1987. However, this statement is inconsistent with that of the applicant in the I-687 application, wherein the applicant states that he lived in Valinda, California beginning in January 1983. In addition, the affiant states that the applicant worked for the affiant's construction company, but he does not list the specific dates of the applicant's employment with the company. In his letter, [REDACTED] states that he has known the applicant since 1981, when he met him through a mutual friend.³

The record contains two letters from [REDACTED] of Argubright Construction. In her first letter [REDACTED] states that she has personal knowledge that the applicant has lived in the United States since 1982. However, in a second letter [REDACTED] states that the applicant did not begin working for the company until after the requisite statutory period. Therefore, it is unknown what the basis is of the affiant's knowledge of the applicant's residence in the United States during the requisite period.

² The letter of [REDACTED] is almost identical to the letter of [REDACTED].
The letter of [REDACTED] is almost identical to those of [REDACTED] and [REDACTED].

The applicant has submitted a letter from [REDACTED] who states that he has known the applicant since 1986, and that the applicant has worked on construction projects in his homes.⁴

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides 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 in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true.

Furthermore, the employment verification letters of [REDACTED] and [REDACTED] fail to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letters do not state how the witnesses were able to date the applicant's employment. It is unclear whether the witnesses referred to their own recollection or any records they or the company may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, these documents have minimal probative value.

The remaining evidence in the record is comprised of the applicant's statements, the instant Form I-687, a Form I-485 application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, applicant's initial Form I-687 application filed in 1990 to establish the applicant's CSS class membership, receipts for several money orders, a receipt for registered mail, a pay stub, a copy of a traffic citation, a copy of a postmarked envelope, and copies of receipts for bus tickets.

The record contains six receipts for money orders with dates in 1981, 1982 and 1983. Although these receipts would provide some detail regarding the applicant's presence in the United States in 1981, 1982 and 1983, they do not establish the applicant's continuous residence for the duration of

⁴ The letter of [REDACTED] is almost identical to the letter of [REDACTED]

the requisite statutory period. However, some of the receipts show that the dates appear to have been altered. The altered dates are material to the applicant's claim, in that they have a direct bearing on the applicant's residence during the requisite period. Therefore, these documents have minimal probative value. Furthermore, 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These alterations undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The applicant has submitted a receipt for registered mail. However, the probative value of this receipt is limited in that the postmark date is not legible. Therefore, the receipt does not establish the applicant's continuous residence during the requisite period.

The record contains applicant's pay stub from Minors Lawn Care for the pay period from October 13 to October 16, 1987.⁵ Although this pay stub provides some detail regarding the applicant's residence in the United States from October 13 to October 16, 1987, it does not establish the applicant's continuous residence for the duration of the requisite statutory period.

The applicant has submitted a Fort Worth, Texas traffic citation date October 21, 1987. Although this traffic citation provides some detail regarding the applicant's residence in the United States on October 21, 1987, it does not establish the applicant's continuous residence for the duration of the requisite statutory period.

The record contains a postmarked envelope. However, the probative value of this envelope is limited in that the postmark dates is not legible. Therefore, the postmarked envelope does not establish the applicant's continuous residence during the requisite period.

The applicant has submitted receipts for two Greyhound bus tickets dated September 3 and October 26, 1987. However, these receipts do not contain the applicant's name. Therefore, these receipts do not establish the applicant's continuous residence throughout the requisite period.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his residence and employment in the United States during the requisite statutory period. The record reveals that in the instant I-687 application the applicant lists residences in the United States from February 1981 to December 1982 at [REDACTED] in Santa Ana, California, from January 1983 until July 1987 at [REDACTED] in Valinda, California, then from July 1987 for the duration of the requisite statutory period at [REDACTED] in Fort Worth, Texas. However, in the initial I-687 application the applicant lists residences at [REDACTED] in Santa Ana, California from 1981 until 1987, then from 1987 for the duration of the requisite period at [REDACTED] in Fort Worth, Texas.

⁵ The pay stub lists a gross pay for the pay period of \$314.00, and a year-to-date gross pay of \$638.50. However, according to the instant I-687 application, the applicant began working for this employer in July 1987.

In addition, the record reveals that in the instant I-687 application the applicant lists employment in the United States from February 1981 until June 1987 with [REDACTED] in Valinda, California, and from July 1987 for the duration of the requisite statutory period with Minors Lawn Care of Fort Worth, Texas. However, in the initial I-687 application the applicant lists employment from February 1982 until July 1987 with [REDACTED]. The applicant does not list any additional employment for the duration of the requisite statutory period.⁶

The applicant's contradictions regarding the dates the applicant resided and worked at a particular location within the United States are material to his claim in that they have a direct bearing on the applicant's residence in the United States for the duration of 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 pointing to where the truth lies. As stated above, 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

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 on this basis.

⁶ In the initial I-687 application, the applicant lists employment from January 1989 onward with Argubright Construction. While outside of the requisite time period, the inconsistency calls into question the applicant's continuous residence in the United States during the requisite period.

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