

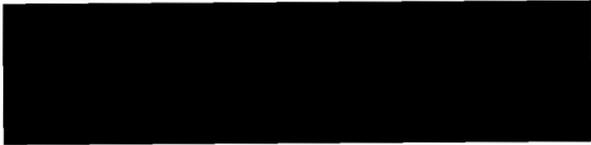
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: MSC-06 101 20686 Office: FAIRFAX Date: **JUL 29 2009**

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 in Fairfax, Virginia. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of El Salvador who claims to have lived in the United States since 1981, 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 on January 9, 2006. 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 period.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement through the requisite period.

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) 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 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.

The issue in this proceeding is whether the applicant (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 AAO determines that the applicant has not met his burden.

The record reflects that the applicant provided conflicting information and documentation regarding his initial entry into the United States and his continuous residence in the country during the requisite period. On the Form I-687 the applicant filed in 1990, the applicant indicated that he entered the United States in September 1981, resided continuously in the country through the requisite period. The applicant indicated the following as his residential and employment information during the requisite period:

Addresses:

- [REDACTED], from 1981 to 1983;
- [REDACTED] from 1983 to 1985;
- [REDACTED] 1985 to August 1988; and
- [REDACTED], from September 1988.

Employment:

- [REDACTED] roofer helper, from 1981 to 1985; and
- Superior Construction Roof Company, Chatsworth, California, roofer, from November 1985.

On the Form I-687 the applicant filed in January 2006, he indicated the following as his residential and employment information during the requisite period.

Addresses:

- [REDACTED] from 1981 to 1982;
- [REDACTED] from 1982 to 1985; and
- [REDACTED] from 1985 to 1993.

The applicant did not indicate any employer in the United States during the 1980s. The first employment information provided by the applicant on this form was from June 2005. The information on the two Forms I-687 is further contradicted by an affidavit from [REDACTED] property manager at [REDACTED], dated April 16, 2006, stating that the applicant rented an apartment from him at [REDACTED] from December 1981 to June 1982. It is noted that the applicant did not claim the [REDACTED] address as one of his residential addresses during the 1980s.

The inconsistencies in the residential and employment information casts considerable doubt on the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The record includes a letter of employment from [REDACTED], owner of Superior Construction Roof Company in Chatsworth, California, dated April 26, 1988, stating that the applicant was employed with the company since 1985 and was paid \$220.00 per week. The letter of employment does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because it did not provide the applicant's address during the periods of employment, did not

indicate whether the information was taken from company records, and did not indicate whether such records are available for review. The letter is not supplemented by any earnings statements, pay stubs, or tax records demonstrating that the applicant was actually employed during any of the years claimed. Thus, the employment letter has limited probative value. It is not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

The record includes a copy of W-2 Wage and Tax Statement for 1984 from Western American Manufacturing in Valencia, California as well as a copy of a Form 1040 U.S. Individual Income Tax Return for the year 1984. The applicant did not claim Western American Manufacturing as one of his employers in the United States during the 1980s. The copy of the Form 1040 was not signed by the applicant to show that he actually filed an income tax return for that year. In fact, a statement from the Internal Revenue Service in the file clearly indicated that the applicant's name did not match the information from the Social Security Administration for the social security claimed by the applicant. The statement did not support the applicant's claim that he filed a U.S. income tax return for 1984, and calls into question the credibility of the Form 1040 as evidence that the applicant resided in the United States for that year. Even if the AAO accepted the copy of the Form 1040 as evidence that the applicant was in the United States for the year 1984, it is not sufficient evidence to establish the applicant's continuous residence from before January 1, 1982 through the requisite period. Thus, the Wage and Tax information and the Form 1040 U.S. Individual Income Tax Return for 1984, have little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – a copy of a California diver license allegedly issued to the applicant on June 21, 1985, as well as affidavits from individuals who claim to have rented an apartment to or otherwise known the applicant during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

For example, the affidavits in the record have minimalist formats with very little input by the affiants. One of the affiants – [REDACTED] – claims to have rented an apartment to the applicant from December 1981 to June 1982. However, as discussed above, the rental apartment provided by [REDACTED] is inconsistent with that provided by the applicant for the same period. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affiants claim to have known the applicant since 1981, however, none of the affiants provided detailed information about the applicant's life in the United States such as where he worked, or the nature and extent of their interactions with him over the years. The affiants did not provide information about their identities and residence in the United States during the

1980s, nor are the affidavits accompanied by any documentary evidence demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

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.

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.

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