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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

41

FILE:

MSC-02-015-61013

Office: CHICAGO

Date:

**JUN 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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, Chicago. 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). The director denied the application, finding that the evidence submitted was not credible and not sufficient to support the applicant's claim that he had resided in the United States continuously since before January 1, 1982.

On appeal, counsel contends that the director has erroneously denied the application without affording the applicant the opportunity to be interviewed. The director also claims that the director has failed to issue a notice of intent to deny (NOID) before rendering the final decision, barring the applicant an opportunity to resolve the perceived deficiency in his application.

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.

On appeal, the applicant states that the application was denied without the opportunity for an interview. Pursuant to 8 C.F.R. § 245a.2(j), each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

A review of the record in this case reveals that the applicant was issued a notice to appear for an interview with an immigration officer on September 7, 2006. The evidence of record shows that a LIFE Act appeal issue was resolved during the interview for temporary resident status on September 7, 2006. However, counsel states on his appellate brief that the applicant was not interviewed on his Form I-687 application on the scheduled interview date. Neither the applicant nor his counsel submits a sworn statement indicating that the applicant was not interviewed. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpatya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The AAO declines to accept the uncorroborated assertion of counsel that the applicant was not interviewed on his Form I-687 application on September 7, 2006.

On appeal, counsel also claims that the director should have issued a NOID before rendering his final decision. Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a NOID, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class

membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. See CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

Here, the director treated the applicant as a class member and denied the application because the applicant had failed to submit credible evidence. Thus, the director was not obligated to issue a NOID prior to rendering his final decision.

The sole issue in this proceeding is whether the applicant has provided sufficient documentation to prove by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

As evidence of his eligibility for the benefit sought, the applicant presented numerous contemporaneous documents including photocopies of his Illinois identification cards issued in 1988 and 1990; various utility bills received in 1989 and 1990; photocopies of his pay stubs received in 1989, 1990, and 1991; letters and certificates of appreciation from his past and current employers; photocopies of lease agreements in 1989 and 1990; and photocopies of his individual tax returns from 1989 to 2000. Upon a *de novo* review, the AAO determines that these contemporaneous documents are relevant, credible, and probative as evidence that the applicant has resided and worked in the United States continuously since 1988.

To show continuous residence since before January 1, 1982, the applicant submitted two affidavits from [REDACTED]. The affiant states in both affidavits that he employed the applicant as a cashier at Burgerland from August 1981 to February 1987. The affiant also indicates that both the applicant and his wife have resided in the United States continuously since 1981. Both affidavits, however, lack probative value because the affiant fails to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to state the inclusive dates of the applicant's employment, the description of the applicant's duties with the company, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Service (USCIS) may have access to the records.

A review of the applicant's Form I-687 filed in 1990 further reveals that the applicant has never worked at Burgerland. The applicant stated on his 1990 Form I-687 that he worked at various flea markets from September 1981 to June 1987. On his most current application, the applicant only listed his employment in the United States from 1989. 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.

Further, the AAO notes that the applicant has two children born in Pakistan during the requisite period, one on April 30, 1983 and the other on October 19, 1985. The applicant has not explained how the children were conceived and born in Pakistan at a time when the applicant states he was continuously living in the United States. The evidence does not establish that the applicant's wife resided in the United States during the requisite period. The evidence submitted, when considered together with the applicant's testimony, does not prove by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the noted inconsistencies, and the lack of detail in the record 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 the 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.

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