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FILE: [REDACTED]
MSC 05 244 23684

Office: LOS ANGELES

Date: JUN 03 2009

IN RE: Applicant: [REDACTED]

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 established by a preponderance of the evidence that he resided continuously in the United States in an unlawful status prior to January 1, 1982 and through the duration of the requisite period.

On appeal, counsel states that the applicant has proven that he has been continuously unlawfully present for the statutory 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 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 and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview on May 8, 2007, the applicant claims to have first entered the United States in September 1980 without inspection at San Ysidro, California. The applicant also claims that he left the United States in December 1980 to go to Mexico and returned illegally in January 1981.

The applicant submitted several declarations from friends to establish his initial entry and residence in the United States during the requisite periods. [REDACTED] states that she first met the applicant in 1988 when her husband had him do some work on their home. [REDACTED] claims that she knows the applicant entered the United States prior to 1982 because her husband had him work for him in the past years (1981-1988). [REDACTED] and [REDACTED] and [REDACTED] claim to have first met the applicant in 1986, 1987 and 1988, respectively. Further, Mr. [REDACTED] and [REDACTED] state in their declarations that their knowledge of the applicant’s entry into the United States is based on what the applicant told them and not their personal knowledge of the applicant’s whereabouts. Therefore, these declarants are unable to personally attest to the applicant’s illegal entry into the United States before January 1, 1982 and his continuous residence during the requisite period.

The USCIS adjudication officer's notes reveal that during the applicant's Form I-687 application interview, the applicant's testimony differs from what the declarants stated in their declarations. For instance, the applicant states that he met [REDACTED] around 1984-1985, [REDACTED] in 1986 and [REDACTED] in 1987. The declarants do not claim to have met the applicant during the time period asserted by the applicant. The applicant also claims that he met [REDACTED] in 1987-1988 and that she hired him to do yard work. However, [REDACTED] claims in her declaration that the applicant has done some tile work at her home.

[REDACTED] and [REDACTED] claim to have first met the applicant in 1981. However, some of the information contained in the declarant's affidavits is contradictory. For example, [REDACTED] states that he knows the applicant entered the United States prior to 1982, because the applicant worked for him during 1980. However, [REDACTED] claims he did not meet the applicant until 1981. [REDACTED] states that he knows the applicant entered the United States prior to 1982 because he worked for him in 1980. However, [REDACTED] claims he did not meet the applicant until January 1981. Moreover, 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. The declarations naming the applicant as an employee during the requisite periods do not meet all of the requirements stipulated in the aforementioned regulation.

[REDACTED] states in his declaration dated April 22, 2007 that he has known the applicant since 1981. In another declaration by [REDACTED] dated May 10, 2005 and unsigned, the declarant states that he first met the applicant in 1985 in Orange, California.

The inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's initial entry and continuous residence 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).

The declarations do not include sufficient detailed information about the claimed relationship spanning from 22 to 25 years and the applicant's continuous residency in the United States since 1981. For instance, none of the declarants supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies and the date and manner he entered the United States. The declarants also 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. The declarations have not confirmed the applicant's residency in the United States prior to January 1, 1982 and throughout the requisite period.

The declarations do not 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. The declarations do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have minimal probative value in supporting the applicant's claim that he resided in the United States for the entire requisite period.

The applicant's remaining evidence consists of photographs but the photos are not dated and therefore, cannot be verified. Considering all the evidence of record, the AAO finds that the applicant has not established that he resided in the United States for the requisite period. Given the lack of detail in the affidavits, and the inconsistencies regarding the applicant's continuous residence in the United States, the applicant has failed to submit sufficient evidence to overcome the director's denial. 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 on this basis.

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