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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: JUN 03 2009

MSC-05-259-12957

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:

[REDACTED]

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, 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 denied the application after determining 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 noted that the applicant testified under oath and in writing during his immigration interview on February 28, 2007 that he first entered the United States in March of 1982 and was therefore not eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director further noted the discrepancies in the applicant's testimony regarding his absences from the United States during 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, counsel asserts that the director's decision is arbitrary and capricious and that the applicant has submitted testimony and documentary evidence sufficient to establish his eligibility for temporary resident status. Counsel also asserts that the applicant was not given an opportunity to address the issues raised for the first time by the director in the final decision. Counsel further asserts that the applicant is eligible for class membership. The applicant does not submit any new evidence on appeal.

Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that he had not established that he was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to his admissibility and claim of continuous residence in the United States since prior to January 1, 1982.

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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an “emergent reason.” Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means “coming unexpectedly into being.”

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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of income tax returns and other related documents that are dated subsequent to the requisite period, and therefore, cannot be used to support his claimed presence in the United States throughout the requisite periods.

The record shows that applicant stated during his immigration interview that he first entered the United States in March of 1982. On the applicant’s current Form I-687 application at part #30, where he were asked to list his residence history, the applicant stated during the interview¹ that he resided on [REDACTED] in Delano, California on weekends from March 1982 to 1985; and at [REDACTED] in Glendale, California from 1985. In contrast, on the applicant’s previous Form I-687 application dated April 3, 1991 he stated at part # 33 that he resided at [REDACTED] in Los Angeles, California from December 26, 1981 to September 1985; and at [REDACTED] in Glendale, California from September 1985 to April 1991.

The applicant also testified under oath during his immigration interview that he was absent from the United States from February 1985 to April 1985. However, the applicant stated at part #32 of his current Form I-687 application that he was absent from the United States from December 1985 to June 1986. In contrast, on the applicant’s previous Form I-687 application at part #35 the applicant stated that he was absent from the United States from September 27, 1985 to October 26, 1985.

At part #33 of the applicant’s current Form I-687 application, where he was asked to list his employment history, he stated during his interview (noted in red ink) that he was employed on the Dole Farm in Delano, California from March 1982 to January 1985, at Global Fixtures in Los

¹ Adjudicating officers at USCIS use a red pen to note any changes to the application during the course of an applicant’s interview. The Form I-687 filed on May 27, 2005 indicates in red ink that the applicant resided with his sister on weekends, on [REDACTED], Delano, California, beginning March 1982.

Angeles, an inventory warehouse, from August 1985 to 1986, and with [REDACTED], a vending machine business in San Fernando Valley, from 1986 to 1988. However, on the applicant's previous Form I-687 application at part #36 the applicant stated that he was self-employed as a warehouse clerk from October 1982 to April 1991.

Although the applicant claims to have been employed in the United States since March of 1982, he submitted a copy of his Social Security Statement of Earnings that lists his taxed earnings from 1991 to 2003.

The applicant indicated on his previous Form I-687 application that he had three children born in the Philippines. However, during his immigration interview he testified under penalty of perjury that he only had one child born in the Philippines. The record does not contain the birth dates or birth certificates of these three children. The record does not reflect whether these births occurred during the requisite period or their materiality to the claim of residence during the requisite period.

The applicant submitted an affidavit dated November 2, 2006 from [REDACTED] in which she stated that she has known the applicant since 1981 and listed the applicant as residing in Delano, California from March 1981 to August 1985; Glendale, California from August 1985 to February 1996. This statement is inconsistent with the applicant's previous Form I-687 at part #33 where he stated that he resided on [REDACTED] in Los Angeles, California from December 26, 1981 to September 1985. The statement is also inconsistent with the applicant's current Form I-687 application at part #30 where she stated that she resided in Delano, California from 1982 to 1985; and in Glendale, California from April 1985 to June 1993.

In the instant case, the applicant has failed to establish his continuous residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the basis for the director's denial. Although the applicant claims that the director erred in addressing issues for the first time in the final decision, he fails to provide an explanation or evidence on appeal that would rebut the issues raised. The record of proceeding contains many inconsistencies and contradictions which call into question the credibility of the applicant's proof. 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. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract from the credibility of this 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 unexplained inconsistencies and contradictions found in the record, it is concluded that the applicant has failed to establish

continuous residence in an unlawful status in the United States for the requisite period 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.