

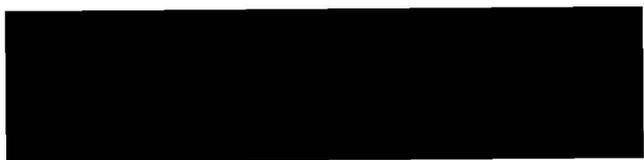
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U.S. Citizenship
and Immigration
Services

LL



FILE: [REDACTED]
SRC 07 186 51012

Office: DALLAS

Date: JUN 04 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, Dallas. 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 provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) failed to consider all of the evidence prior to making its decision. Counsel also states that the applicant provided corroborating evidence of his residence in the United States since December 1981.

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, letters from previous employers and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant indicates in his testimony and various documents submitted into the record that he entered the United States without inspection in November or December 1981.

The applicant submitted two affidavits to establish his initial entry and residence in the United States during the requisite period. The affidavit from the applicant’s brother, [REDACTED], identified a photo submitted as that of himself and the applicant in January 1982. When questioned by a USCIS adjudicating officer telephonically, the affiant stated that he did not recall exactly, but the photo of him and his brother was taken in 1983 or 1984. On appeal, counsel states that the affiant became nervous when contacted by the adjudicating officer and stands by the **information given in** his sworn statement. The photo is not dated and given the conflicting testimony of [REDACTED], does not establish that the applicant was in the United States in 1982. The affiant also states that he resided in the United States for one and one-half years before his brother, [REDACTED], came into this country.

However, when questioned by the adjudicating officer, the affiant stated that he came to the United States in 1980 and his brother came about two years later, and thereafter, they lived together from 1984 until 7 or 8 years later. Although the applicant claims in his affidavit that he paid for his brother to come from Mexico, the affiant did not give any information to the adjudicating officer about how much he paid or the details describing the arrangements for the applicant's illegal entry. The affiant also does not state where he and the applicant resided together in the United States and provides no other information about the applicant.

states in his affidavit that he has been acquainted with the applicant and knows that the applicant resided in Dallas, Texas, from late 1981. The applicant states they were co-workers at since January 1982. The adjudicating officer noted on the affidavit that the information given by the affiant was not verifiable. The affiant also attests to the applicant's good moral character and that the longest period in which he has not seen the applicant is one month. The affidavit provides no other information about the applicant.

The applicant also submitted several letters. The letter signed by states that he got to know the applicant in December 1981 and that the applicant is a very nice person. The letter provides no other information about the applicant.

The letter signed by states that he worked with the applicant at from 1984 to May 1987. In the applicant's sworn affidavit, he claims that he worked for , Dallas, Texas, from 1985 through 1986 and again in 1988 through 1989. The applicant does not claim to have worked for on his Form I-687 application; instead he claims to have been employed by , Dallas, Texas, as a busboy from January 1982 to October 1985 and , Dallas, Texas, as kitchen help from April 1986 to July 1990.

and state in their letter that the applicant is well known to them and always lived in Texas. The letter has not been signed by and and the adjudicating officer noted on the letter that there was no answer when the affiants were called to verify the information.

, the applicant's brother-in-law, states that he has known the applicant for 26 years and attests to his good moral character. The letter provides no other information about the applicant.

The manager of , states in her letter dated December 6, 2006, that in 1982, she hired the applicant. In earlier sworn statements dated July 11 and August 8, 1990, acknowledged that the applicant worked for from January 1982 until October 1985 as a busboy under the name of . When questioned by the adjudicating officer, the affiant stated that she was not sure and that the applicant was hired in 1982 or 1983. On appeal, counsel states that the affiant stands by the information given in her sworn

statement. Given [REDACTED] conflicting testimony, she does not establish that the applicant worked for [REDACTED] in 1982. Further, the letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) that states 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 applicant claims in his sworn affidavit that he worked for [REDACTED] as a busboy from January 1982 to August 1985. Further, in his I-687 application interview, the applicant states that he used the name [REDACTED] while working for [REDACTED]. Information in the record suggests that because there were two employees named [REDACTED], that the applicant was called [REDACTED]. The information of record does not satisfactorily establish that [REDACTED] and the applicant are the same person. 8 C.F.R. § 245a.2(d)(2). Moreover, the 1983 Wage and Tax Statement shows the address of [REDACTED] as [REDACTED]. The applicant never claimed to reside at this address on his Form I-687 application. Given the inconsistencies and the applicant's questionable identity as [REDACTED], the employment information from [REDACTED] is minimally probative.

[REDACTED] provided two letters that state the applicant was employed by [REDACTED] from January 1982 to October 1985 as a busboy and kitchen helper. [REDACTED] indicates that [REDACTED] was employed by [REDACTED] from 1982 to 1985 as a busboy and kitchen helper. Neither of the letters comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) nor refer to the applicant as [REDACTED].

[REDACTED] states in his letter that the applicant was employed by Don's Seafood and Steakhouse, Dallas, Texas, from 1983 to 1988. An adjudicating officer notes that the applicant's employment was verified. In his sworn affidavit, the applicant claims to have worked for Tupinamba's Restaurant and Don's Seafood Restaurant simultaneously. However, the applicant has not claimed to have ever been employed simultaneously by Don's Seafood and Steakhouse and Tupinamba's Restaurant on his Form I-687 application. Instead, he claims to have been employed by Tupinamba's Restaurant, Dallas, Texas, as a busboy from January 1982 to October 1985 and JAC Enterprises, Inc., Dallas, Texas, as kitchen help from April 1986 to July 1990. [REDACTED], vice-president of JAC Enterprises, Inc. states in her notarized letter that the applicant was employed by JAC from April 1986 through July 1990. However, a USCIS adjudicating officer noted on the letter that the information was not verifiable.

The applicant also states in his sworn affidavit that he worked as a cook for [REDACTED] Dallas, Texas, in 1987 through 1988 and for [REDACTED], Dallas, Texas, as a busboy, from 1985 through 1986 and again from 1988 through 1989. However, the applicant never claimed to be employed at either restaurant on his Form I-687 application or work simultaneously at La

[REDACTED]

[REDACTED] and [REDACTED] and [REDACTED]

The inconsistencies in the evidence provided regarding the applicant's employment history are material to the applicant's claim in that they have a direct bearing on the date the applicant initially entered the United States and resided 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 applicant's remaining evidence consists of six photographs, three receipts, one card, two letters written in the Spanish language and three stamped envelopes. Considering all the evidence of record, the AAO finds that the applicant has established that he probably resided in the United States for some part of the requisite period. However, given the lack of detail in many of the affidavits and the inconsistencies regarding the applicant's employment at Tupinamba's, 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.

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