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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

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FILE:



MSC-05 167 11155

Office: DALLAS

Date:

JUN 22 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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

The applicant, a native of Mexico who claims to have arrived in the United States with his parents in May 1981, and has continuously resided in the country since then, 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 March 16, 2005. 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 the applicant asserts he has submitted sufficient credible evidence to establish he meets the continuous residence requirement for legalization.

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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived continuously in an unlawful status during the requisite period consists of the following:

A photocopied summary of the applicant's immunization record as recorded by the Tarrant County Public Health Department in Fort Worth, Texas, showing various immunizations administered to the applicant and the dates they were administered. The first entry was on November 25, 1977 and the last entry was on December 3, 1985. There were no entries after December 3, 1985.

A photocopy of a statement from Sacred Hearth Church in Comfort, Texas, dated May 10, 1985, addressed to the applicant's father. The statement indicated that the applicant's father submitted documents and appears to be eligible for legalization, and named the applicant as a dependent on the statement. The statement did not state anything about the applicant or his father's membership at the church or their continuous residence in the United States during the 1980s.

Photocopied affidavits from the applicant's father and mother, sworn to on March 1, 2005, stating that they brought the applicant to the United States in May 1981, that they worked and fully supported the applicant from May 1981 to December 1988, that they moved around so much that they do not have any proof of their own residence in the United States during the 1980s, and that in March 1988, they accompanied the applicant to the Immigration office to file for legalization but was "front desked."

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant, who claims to have entered the United States with his parents in May 1981, was only 3 years when he allegedly entered the United States. The applicant did not submit any credible documentation from his parents to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of 3 in 1981.

The photocopied summary of the applicant's immunization record in the file does not establish the applicant's continuous residence in the United States from before January 1, 1982 until the date he attempted to file for legalization – which the applicant claims was in March 1988. The summary was compiled by the Tarrant County Public Health Department in Fort Worth, Texas, with a certificate date of July 7, 1992. The first entry on the immunization record was November 25, 1977 – one month after the applicant was born in Mexico and almost three years prior to the applicant's alleged entry into the United States. The record is a summary of the immunization administered to the applicant from 1977 to 1985. The original document from which the summary was compiled is not part of the evidentiary record to verify that the shots were administered to the applicant and where they were administered. There is no indication on the immunization record that any of the immunization was administered to the applicant in the United States. Since neither the applicant nor his parents provided credible documentation of the date of initial entry into the United States, it is very likely that the applicant was in Mexico when he received the immunizations. In addition, there is no entry on the record beyond December 3, 1985. Therefore, the photocopied summary of the applicant's immunization record has little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period for legalization.

The photocopied statement from Sacred Heart Church in Comfort, Texas, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The statement, which was addressed to the applicant's father, was not signed by an official from the church. The statement indicated that the applicant's father submitted documents and appears to be eligible for legalization, and nothing about the applicant other than that he is a dependent of his father. The statement was not addressed to the applicant, did not indicate whether the applicant was a member of the congregation and the dates of membership, did not state where the applicant lived at any point during the 1980s, did not indicate how and when he met the applicant, and did not indicate whether his information about the applicant was based on personal knowledge, the church's records, or hearsay. Since the letter does not comply with subparts (B), (C), (D), (E), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the statement has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits in the record from the applicant's parent are suspect. The affidavits have minimalist format and contain similar wordings. The affiants did not provide any documentation of their own identities and residence in the United States during the requisite period. The affidavits were sworn to in Dallas, Texas, on the same date – March 1, 2005. However, according to the applicant's testimony at his legalization interview on January 24, 2006, none of the affiants were in the United States on March 1, 2005. The applicant stated that they were residing in Mexico as of March 1, 2005. Thus, based on the applicant's statement, it appears that the affidavits were completed by individuals other than the applicant's parents. Additionally, the affidavits are not accompanied by any documentation – such as photographs, letters, school records, hospital records, and the like – 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 limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from 1981 to 1988.

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 analysis of the evidence, the AAO concludes that 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.