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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 306 12723

Office: LOS ANGELES

Date: **JUN 24 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.

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, 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 director's decision fails to discuss any of the evidence and declarations provided in support of the 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 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.

In the applicant’s sworn statement taken during his Form I-687 application interview, the applicant stated that he arrived in United States on October 10, 1981. His Form I-687 application and the United States Citizenship and Immigration Services (USCIS) adjudication officer’s notes reveal that during the applicant’s Form I-687 application interview, the applicant claims to have first entered the United States without a visa through San Ysidro in November 1981.

The AAO notes that on the Form I-687 at part 30 where the applicant is asked to list all residences in the United States since entry, the applicant listed his first address in the United States in 1990. At part 33, where the applicant is asked to list all employment in the United States since entry, the applicant lists employment beginning in 1998 and an undated employment with Laslo Sports Car Center. On November 10, 2006, the applicant signed a statement amending the Form I-687 to include employment throughout the requisite period. The Laslo Sports Car employment listed by the applicant on his Form I-687 is not listed on the amendment as having occurred during the requisite period. The applicant does not explain why he failed to list his residences and employment since his initial entry on his Form I-687.

As noted by the director, at part 32 of the Form I-687, the applicant lists three absences during the requisite period, in 1982, 1983/84 and 1986. The applicant also signed the birth certificates of his children born in Mexico July 23, 1983, July 24, 1984 and August 11, 1987. His domicile is listed as Mexico on the date of signature on all three birth certificates. These absences are not listed on the applicant's Form I-687. On appeal, the applicant fails to address the director's concerns with respect to the applicant's continuous residence in the United States during the requisite period, considering the birth of these children and his presence in Mexico to register the births.

The applicant submitted several declarations from friends to establish his initial entry and residence in the United States during the requisite periods. [REDACTED] states in his declaration that he first met the applicant in 1982 when they played soccer together and that they later worked together at the Collision Body Shop in the 1990s. [REDACTED] states that she has known the applicant since 1982 when he would play soccer with her husband. [REDACTED] and [REDACTED] claim in their declarations that they first met the applicant in 1985 playing soccer, and fishing, respectively. [REDACTED] and [REDACTED] first met the applicant in 1986. Mr. [REDACTED] states that he met the applicant when he was working at the Collision Body Shop located in Huntington Park, California. However, the applicant does not claim to have been employed by the Collision Body Shop during the requisite period on either his Form I-687 application or the amendment to his Form I-687 application. The letter of recommendation from [REDACTED] attests to the applicant's good moral character. None of the declarants personally attest to the applicant's illegal entry into the United States before January 1, 1982 and his continuous residence during the entire requisite period. The declarations provide no other information about the applicant.

[REDACTED] states in his declaration that he first met the applicant through the Belvedere Soccer League at the end of 1981 and that they played soccer together on a team called [REDACTED] throughout the 1980s. The applicant does not list either of these organizations at part 31 of on his Form I-687 application. [REDACTED] and [REDACTED] state that they met the applicant in November 1981 while working at Nissan of Downey, and a body shop called the Big Four, respectively. The applicant does not claim to have worked for the Big Four on either his Form I-687 application or the amendment to his Form I-687. [REDACTED] additionally states that the applicant rented a room from him at [REDACTED] in California since November 1981. The applicant does not list this address at part 30 of the Form I-687. The declarations provide no other information about the applicant.

[REDACTED] states in his declaration that he hired the applicant as his assistant repairing car bodies at Ferrar Daeley Pontiac from January 1982 to November 1988. However, the applicant does not claim to have worked with this employer for the same time period. The amendment of his Form I-687 states that he worked for Ferrar Daeley Pontiac from 1982 to 1987. 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.

The noted 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 27 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, shared activities 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 the applicant's children's immunization records, his child, [REDACTED] health record, the applicant's personal credit card report of purchases from Snap-on Tools, training certificates dated after the requisite period and copies of photographs. One of the immunization records does not state the child's name and date of birth. Therefore, it cannot be identified as belonging to [REDACTED]. The applicant's child, [REDACTED] born on August 11, 1987 in Mexico received his vaccinations in Mexico on February 16, 1988, November 4, 1989 and June 11, 1989. Finally, on [REDACTED] and [REDACTED] immunization records, the doctor's office or clinic is not always listed. Therefore, the immunization records are some evidence of the applicant's

presence in the United States from 1984 through 1988 but are insufficient to establish the applicant's entry and continuous residence throughout the requisite period. The copy of the credit booklet for Snap-on Tools showing the record of purchases only reflects a first name and does not bear the holder's last name. Therefore, it cannot be identified as belonging to the applicant. The photos are not dated and 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 declarations and inconsistencies when comparing the evidence provided, 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.