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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

41

FILE:

[REDACTED]

Office: CHICAGO

Date:

MAR 10 2009

MSC 06 077 11200

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:

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, Chicago. 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 on March 28, 2007, 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, the applicant states that the entire time in question, he resided and worked in the United States. The applicant resubmits copies of the same documents that were previously submitted with his Form I-687 application. The applicant states that the documents show that he resided in the United States since before December 31, 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, affidavits of employment and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

In the applicant's class membership (LULAC) determination form, the applicant states that he first entered the United States without inspection on January 14, 1980.

The affidavits submitted do not supply enough detail to lend credibility to the affiant's relationship with the applicant. The affidavits have not confirmed the applicant's residency in the United States prior to January 1, 1982 and throughout the requisite period. The sworn affidavit dated November 15, 2004 signed by [REDACTED], states that the applicant resided in the United States with the affiant at [REDACTED], Hawaiian Gardens, California, from January 1981 to December 1981. In his affidavit dated July 7, 2003, [REDACTED] states that the applicant resided at [REDACTED], Melrose Park, Illinois, from March 1982 to March 1984.

On his Form I-687 applications dated December 16, 2005 and September 23, 1991, the applicant listed his place of residence as [REDACTED], Chula Vista, California, from January 1980 to January 1982 and [REDACTED] Melrose Park, Illinois, from January 1982 to February 1982 and January 1983 to April 1983. These dates conflict with the dates given by the affiants. The Hawaiian Gardens, California address is not listed on either of the applicant's Form I-687 applications.

The inconsistencies regarding the dates the applicant resided in different cities and states within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's 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 affidavits do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States since January 14, 1980. The affidavits fail to explain how the affiants and the applicant developed and maintained a friendship. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the applicant during the requisite period. The affiants 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.

None of the affidavits 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 affidavits. 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. Upon review, the AAO finds that the affidavits 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 letter from [REDACTED], signed by [REDACTED] states that the applicant worked for the company from January 1980 to December 1982. The letter from [REDACTED] signed by [REDACTED] states that the applicant worked part-time from March 1982 through December 1996. However, this differs from the applicant's Form I-687 dated September 23, 1991 that indicates the applicant worked at [REDACTED] from March 1992 to present. Another Form I-687 dated

December 16, 2005 lists the applicant working at [REDACTED] from May 1982 to present. The applicant's earning record from the Social Security Administration indicates the applicant worked for [REDACTED] from 1990 through 1994. The inconsistencies regarding the dates the applicant worked within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's 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. *Matter of Ho, supra*.

Further, the letter from the [REDACTED] signed by [REDACTED] states that the applicant worked for the company from December 1986 to July 1987. The applicant's Form I-687 dated September 23, 1991 lists the applicant working at the [REDACTED] from January 1987 to March 1987. [REDACTED] are not listed on the letter from the Social Security Administration as a source of earnings for the applicant.

The employment letters submitted do not conform fully with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; 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 letters of employment submitted do not indicate the duties the applicant performed while employed for the affiants. As the letters of employment do not contain all the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

There is some evidence of record that the applicant earned money in the United States in 1980 and was present in the United States for some period of time from 1984 – 1987. The AAO accepts this evidence to establish that the applicant was in the United States for some part of the requisite period. However, the evidence does not establish the applicant's unlawful entry before January 1, 1982 and continuous unlawful residence in the United States throughout the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of 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.

The AAO notes that the applicant was arrested for DUI, no valid driver's license, open liquor and failure to give aid on August 27, 1984 and for retail theft on May 24, 1985. The applicant does not submit court dispositions indicating the resolutions of these arrests. The applicant has not proved that he is admissible to the United States and for this reason as well, is not eligible for temporary residence in the United States.

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