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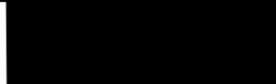
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date: **MAR 10 2009**

MSC-06-045-10123

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.



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 District Director, Chicago, Illinois. 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 had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that he was employed with the A.C. Construction Company. The applicant contends that he was informed during his interview that his documents were fine. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

In regard to the first issue, whether the applicant entered the United States prior to January 1, 1982, the record shows that on May 11, 1981, an officer with the former Immigration and Naturalization Service (INS) apprehended the applicant in Chicago, Illinois. Upon apprehension, the applicant provided his name as [REDACTED] and indicated that he had entered the United States without inspection near El Paso, Texas on or about November 20, 1979. The applicant further stated that he resided at [REDACTED] and was employed with [REDACTED] in Northbrook, Illinois.

The record contains copies of the applicant's 1980 Tax Return, signed May 5, 1981, and 1981 Tax Return, signed January 16, 1982. Both of these documents show the applicant's address as [REDACTED]. The record also contains the applicant's 1980 and 1981 Form W-2, Wage and Tax Statements, from [REDACTED], Chicago, Illinois and [REDACTED] Northbrook, Illinois respectively. Additionally, the record contains a letter from [REDACTED], stating that the applicant was employed with the company from February 7, 1980 to March 23, 1982 as a machine operator.² Finally, the record contains copies of the applicant's Chicago Transit Authority monthly passes issued in 1981. The record, therefore, establishes that the applicant entered the United States prior to January 1, 1982.

The second issue in this proceeding is whether the applicant continuously resided in the United States in an unlawful status for the requisite period. The AAO finds that the applicant furnished probative evidence of his residence in the United States in 1982 and from 1986 to 1988. The record contains the following documents that in the totality establish the applicant's residence in the United States in 1982 and from 1986 to 1988:

- A copy of the applicant's Chicago Transit Authority monthly pass for January 1982;
- A copy of a letter from [REDACTED], stating that the applicant was employed with the company from February 7, 1980 to March 23, 1982 as a machine operator;

A copy of a library card issued to the applicant from the Chicago Public Library with an expiration date of September 1, 1983, indicating that this card was issued prior to 1983;

- A copy of the applicant's Chicago Vehicle Registration and Vehicle Sticker License with an expiration date of June 30, 1983, indicating that the applicant's vehicle registration and sticker license were issued prior to 1983;

² The regulation for employer letters is at 8 C.F.R. § 245a.2(d)(3)(i). Although the letter from [REDACTED] fails to fully comply with the regulation, when viewed within the totality of evidence, it is probative of the applicant's residence in the United States from February 1980 to March 1982.

- A copy of a record from the Illinois Supplemental Food Program for Women, Infants & Children. The record bears the name of the applicant's child, [REDACTED] and his spouse, [REDACTED] at the address [REDACTED]. The applicant provided this address as his residence from 1986 to 1990 on both his prior Form I-687 and current Form I-687. The record shows that the applicant's child was accepted into the program in June 1986, and received food from the program in October 1986, November 1986 and January 1987.
- A copy of a check issued to the applicant from the [REDACTED], Marysville, Kansas. The check states that it is void after February 18, 1987, indicating that it was issued prior to this date;

A copy of an invoice issued to the applicant from [REDACTED] located in Hinsdale, Illinois. The invoice states that it was issued for professional services rendered at Illinois Masonic from May 13, 1987 through May 16, 1987. The record also contains a copy of an invoice issued to the applicant from IMMC Radiology located in Chicago, Illinois, dated June 29, 1987. The invoice shows that IMMC Radiology provided medical services to the applicant on May 12, 1987 and May 14, 1987;

- A copy of an envelope the applicant mailed to his spouse in Mexico. The envelope bears a United States postage stamp and is postmarked July 17, 1987 at Chicago, Illinois;

Copies of North Community Bank, Chicago, Illinois, cashier's checks from the applicant to his spouse. The checks bear the issuance dates: November 21, 1987, December 18, 1987, January 15, 1988 and January 30, 1988; and

- An original Form I-72, Request for Evidence, showing that a Form I-140, Immigrant Petition for Alien Worker, was filed on behalf of the applicant on March 17, 1988.

Although the above documentation establishes the applicant's residence in the United States in 1982 and from 1986 to 1988, the applicant has not furnished sufficient documentation of his residence in the United States from 1983 to 1985. Moreover, both the applicant's prior Form I-687 and current Form I-687 fail to provide his addresses during this time period; they only state that he resided in [REDACTED]. The applicant's failure to provide addresses for this time period casts doubt upon the credibility of his claim of continuous residence in the United States from 1983 to 1985. The following analysis discusses the documentary evidence contained in record of proceeding that covers the time period 1983 to 1985.

The record contains an affidavit from [REDACTED] stating that she has known the applicant since they were both employed at [REDACTED] in Northbrook Illinois. She states that they worked together from 1980 to 1982 as machine operators. However, this affidavit fails to provide any information on her relationship with the applicant after 1982. It does not indicate how frequently she had contact with the applicant, how she had personal knowledge of the

applicant's residence in the United States, or any information regarding where the applicant lived during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he resided in the United States for the entire requisite period.

The record contains a letter from [REDACTED], Chicago, Illinois, stating that the applicant had been living in his parish community since 1982. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This letter fails to comply with the above cited regulation because it does not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

The record also contains a letter from [REDACTED] located in Chicago, Illinois. The letter, dated December 10, 1990, states that the applicant has been his patient since June 14, 1980, and he has seen the applicant on a "continual basis." However, the letter does not establish the origin of the information being attested to. It does not indicate whether [REDACTED] referenced the applicant's medical record or relied on his own recollection of the date the applicant became his patient. Also, [REDACTED] statement that he saw the applicant on a "continual basis" is vague; it is unclear how frequently [REDACTED] actually had contact with the applicant during the requisite period. Furthermore, the letter does not provide any information on where the applicant lived during the requisite period. Given these deficiencies, this letter has minimal probative value in supporting the applicant's claims that he resided in the United States for the entire requisite period.

The record contains an affidavit from [REDACTED], Chicago, Illinois. This affidavit, dated February 26, 1991, states that the applicant had been a client of the store since 1981. However, this affidavit does not establish the origin of the information being attested to. The affidavit states that "records are no longer available," but does not explain how [REDACTED] was able to date the applicant's patronage at his store since 1981. Furthermore, the letter does not provide how frequently he had contact with the applicant during the requisite period. Given these deficiencies, this letter has minimal probative value in

supporting the applicant's claims that he resided in the United States for the entire requisite period.

The record contains numerous copies of color photographs and the applicant's tax returns for 1982 through 1988. None of these documents are probative evidence of the applicant's residence in the United States during the requisite period. The applicant has not identified the individuals featured in the photographs, the location of where they were taken, and the photographs are not date stamped. The tax returns presented by the applicant show that they were completed and filed after the requisite period.³ Given these deficiencies, these documents are not contemporaneous documentation of the applicant's residence in the United States during the requisite period.

Finally, the record contains a letter from [REDACTED] Company, dated February 21, 1991. The letter provides that [REDACTED] has known the applicant since January 1980. It states that the applicant has worked for his company "on and off, as work permits." The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

This letter does not comply with the above cited regulation because it does not: state the applicant's address at the time of employment; provide his exact period employment; explain his duties with the company; and explain whether or not the information was taken from official company records. It is unclear from this letter how [REDACTED] was able to date the applicant's employment with his company in lieu of any records.

Moreover, USCIS records contain information that is inconsistent with [REDACTED] claims of having periodically employed the applicant from January 1980 until the end of the requisite period. As stated, the applicant was apprehended by the INS on May 11, 1981. The record reveals that on May 11, 1981, [REDACTED] posted bond for the applicant's release from detention. When the applicant failed to appear for his June 9, 1981 deportation hearing, the INS issued a notice informing him that the bond was breached. Thereafter, an investigation was conducted to locate the applicant. On March 15, 1982, a criminal investigator interviewed [REDACTED]. [REDACTED] stated that he never knew the applicant and indicated that he posted the applicant's bond with money supplied by the applicant's father. The investigator noted that [REDACTED] was unable to supply any information as to the whereabouts of the applicant. [REDACTED] employer letter, therefore, is not deemed credible and is without any weight in this proceeding. Doubt cast

³ The tax returns for 1983 through 1988 are date stamped as filed with the Internal Revenue Service on November 20, 2002. The 1982 tax return is dated as prepared on May 26, 1993.

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).

Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant failed to provide any probative evidence of his continuous residence in the United States from 1983 to 1985. Therefore, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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.