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U.S. Citizenship  
and Immigration  
Services

LI

FILE:

MSC-05-153-12370

Office: LOS ANGELES

Date: **MAR 16 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.

  
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 determined 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. The director noted that the affidavits submitted were not credible or amenable to verification. The director also noted that based upon the evidence in the record, the applicant first entered the United States in 1985. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts his claim of eligibility for temporary resident status. He states that he has submitted affidavits and other evidence sufficient to demonstrate his continuous unlawful residence in the United States throughout the requisite period.

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. See 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).

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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on March 2, 2005.

The applicant submitted copies of pay stubs from [REDACTED] dated September 1985 through December 1985. Although this evidence may be some evidence of the applicant's presence in the United State during the latter part of 1985, it is insufficient to demonstrate his presence in the United States throughout the requisite period.

The applicant submitted an undated declaration and an affidavit from [REDACTED] in which he stated that the applicant is his nephew, that he has known the applicant to be in the United States since 1980 and that the applicant lived with and was raised by him at [REDACTED] in Compton, California. The declarant also stated that the applicant would cut the neighbor's grass.

The declarant's statements are inconsistent with the applicant's Form I-687 application at part #30 where he listed [REDACTED] in Compton, California as his place of residence from February 1980 to March 1987. The applicant has failed to provide an explanation for this inconsistency. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant submitted the following employment letters:

- An undated declaration from [REDACTED] in which he stated that he has known the applicant since 1982 when he hired him to work for his company, [REDACTED]
- A letter of employment dated February 21, 2005 from the administrator of [REDACTED] in which she stated that the company employed the applicant and that he was a hard worker.

Here, the declarations do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify the dates of the applicant's employment, the address(es) where the applicant resided throughout the claimed employment period, or whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted the following attestations:

- An undated declaration from [REDACTED] in which he stated that he has known the applicant since 1983 and that they were neighbors.
- An undated declaration from [REDACTED] in which he stated that he has known the applicant since 1982 and that he met the applicant as a team player on the soccer team of [REDACTED]
- An undated declaration from [REDACTED] in which he stated that he has known the applicant to be in the United States since prior to 1985, that they were neighbors, and that the applicant would cut his and his neighbor's lawn.
- An undated declaration from [REDACTED] in which he stated that he has known the applicant to be in the United States since 1985 and that the applicant worked with him from January 1986 to 1987, as a gardener.

- An undated declaration from [REDACTED] in which he stated that he has known the applicant since 1983, that they lived near each other, and that they played on the same soccer team.
- An undated declaration from [REDACTED] in which he stated that he has known the applicant since 1980 and that he met the applicant through a mutual friend named [REDACTED] and that he eventually convinced the applicant to join the soccer team.

Here, the declarants have failed to specify the applicant's place of residence or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. They have also failed to specify their addresses as neighbors of the applicant. It is noted that the declarants have failed to specify the frequency with which they saw and communicated with the applicant during the requisite period. It is also noted that except for [REDACTED], none of the declarants, claim to have known the applicant prior to January 1, 1982. Therefore, the declarants' statements cannot be used to establish the applicant's residence in the United States prior to that time. Because the declarations are lacking in detail, they can be accorded little weight in establishing the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

In denying the application the director noted that the applicant failed to submit sufficient evidence to establish his claimed eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. The applicant submits additional evidence.

The applicant submitted a photocopy of his California Driver License for the years 1985 and 1986. Although this may be some evidence of the applicant's presence in the United State in 1985 and 1986, it is insufficient to demonstrate his presence in the United States throughout the requisite period.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he states that the applicant is his brother and that the applicant has been in the United States since 1980. He also states that the applicant lived with their uncle [REDACTED] at [REDACTED] in Compton, California and that the applicant would work with him sometime, and that he would be paid in cash. Here, the affiant's statement is inconsistent with the applicant's Form I-687 application at part #30 where he stated that he resided at [REDACTED] in Compton, California from February 1980 to March 1987. There has been no explanation given for this inconsistency.

- An Affidavit from \_\_\_\_\_ in which he states that he has known the applicant since 1981 and that he came in contact with the applicant through a friend. The affiant fails to identify the mutual friend or the frequency with which he communicated with the applicant during the requisite period.
- An affidavit from \_\_\_\_\_ in which he states that he has known the applicant since 1981 and that they met as neighbors. The affiant fails to specify his or the applicant's place of residence and also fails to specify the frequency with which he communicated with the applicant during the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. The attestations submitted are inconsistent with statements made by the applicant and are lacking in detail. The applicant has failed to provide non-contradictory evidence from or about any responsible adult or guardian sufficient to indicate the circumstances under which he lived in the United States during his childhood and throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies found in the record and the lack of detail found in the attestations, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.