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



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC-06-067-13562

Office: LOS ANGELES

Date: **MAR 27 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: 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 denied the application after determining 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 applicant testified under oath during his immigration interview on October 31, 1994 that he first entered the United States on January 1, 1985. The director also noted that the evidence submitted by the applicant failed to substantiate his claimed continuous unlawful residence in the United States during the requisite period. The director denied the application, finding that the applicant was 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 asserts that in 1994 he was unable to fully understand the immigration officer's questions due to his lack of understanding of the English language, and that to the best of his knowledge he informed the officer that he first entered the United States on January 1, 1981. He further asserts that any statement he may have written and signed during the immigration interview was the result of the immigration officer advising him to do so.

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 December 6, 2005.

The applicant submitted the following attestations:

- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant has lived in the United States since 1981. They also stated that they have kept in contact with the applicant.

- Declarations from [REDACTED], and [REDACTED] in which they stated that they met the applicant in 1986 and that they remain good friends.

Here, declarants [REDACTED], and [REDACTED] 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. 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 neither [REDACTED] nor [REDACTED] claim to have known the applicant prior to 1986. 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.

The applicant also submitted a declaration from [REDACTED] and an affidavit from [REDACTED] in which they each stated that St. Clair Plastics, Inc. has employed the applicant. Mr. [REDACTED] stated that the applicant was a shop foreman since 1987; [REDACTED] stated that the applicant has been employed as a laborer since 1985. Neither of the Forms I-687 submitted by the applicant dates the applicant's employment with St. Clair Plastics to 1985. Here, the declarations do not establish the applicant's residence in the United States before January 1, 1982, and throughout the requisite period. Further, the declarations do not conform to regulatory standards for attestations by employers. Specifically, the declarants do not specify 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). Further, the affidavits are inconsistent with regard to the applicant's dates of employment with St. Clair Plastics.

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 on appeal a declaration from [REDACTED] in which he states that the applicant worked for him as a handyman off-and-on from May 1981 to 1985. This declaration is inconsistent with the applicant's Form I-687 application at part #33 where he stated that he was self-employed as a construction worker from 1981 to 1987. The unresolved inconsistency casts doubt on the applicant's proof. 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, 591-92 (BIA 1988). In addition, the letter does not conform to regulatory standards for attestations by employers in that the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, or whether the employment information was taken from company records. 8 C.F.R. § 245a.2(d)(3)(i).

It is noted that the applicant stated during his immigration interview on October 31, 1994 that he entered the United States for the first time on January 1, 1985; and during his immigration interview on April 7, 2006 he stated that he first came to the United States on January 1, 1981. The applicant's explanation on appeal fails to resolve the inconsistency.

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, do not conform to regulatory standards, and are lacking in detail. To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

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.