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

U.S. Citizenship
and Immigration
Services

41

FILE:

[REDACTED]

Office: NEWARK

Date:

MAR 30 2009

MSC 06 101 14624

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:

[REDACTED]

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, Newark. 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 provided sufficient credible evidence to establish that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant is eligible for adjustment of status under section 245A of the Act. Additional evidence is provided with the appeal for consideration.

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 two affidavits of relationship written by friends and one letter from a previous employer. The AAO will consider all of the evidence relevant to the requisite period.

In the applicant’s class determination form filed in conjunction with his application for temporary residence status under section 245A of the Act, and in his sworn statement, the applicant states that he entered the United States without inspection on October 17, 1981.

The declaration from [REDACTED] states that he met the applicant in November 1981 in a soccer match at the United Brasil Soccer Club in Newark, New Jersey. Mr. [REDACTED] provides no other information surrounding his meeting with the applicant.

The declaration signed by [REDACTED] states that he has known the applicant since 1984. The declarant states they met in a restaurant in Newark, New Jersey, and later shared an apartment at [REDACTED] for six years. Although the declarant claims that the applicant lived with him for six years, he does not supply any details about the applicant’s life, such as, where he went to school, how he spent his time, what kind of work he did at the restaurant, etc. The declarant does not have first-hand knowledge concerning the applicant’s entry into the United States prior to January 1, 1982 since he did not meet the applicant until 1984.

The declarations lack the detail required to establish the credibility of their assertions. The declarations do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The declarants fail to explain how they maintained a relationship with the applicant. The declarants 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.

Neither of the declarations provides 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 letter from [REDACTED] dated September 20, 2005 and signed by [REDACTED] states that the applicant was employed during the following dates: September 1985 to November 1985; January 1986 to September 1986; February 1988 to January 1990. The letter does not contain any other information. 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. As the letter does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

The applicant also submitted copies of four stamped envelopes. Two of the envelopes are addressed to the applicant at [REDACTED] Newark, New Jersey. This address is not listed on the applicant's Form I-687 application as his place of residence in October 1981 or May 1982. The other two envelopes that are postal meter marked October 11, 1984 and May 9, 1985, are addressed to the applicant at [REDACTED] Newark, New Jersey, and [REDACTED] Newark, New Jersey, respectively. During the time periods, the applicant claims to have resided at [REDACTED] Newark, New Jersey, from October 1981 to July 1982, and [REDACTED] Newark, New Jersey, from August 1982 to November 1983 and April 1984 to October 1988. Further, the probative value of these envelopes is limited in that the documents are photocopies rather than originals. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.2(d)(6). The stamped envelopes do not establish the applicant's continuous residence throughout the requisite period.

On appeal, counsel states that the United States Citizenship and Immigration Services (USCIS) never contacted any of the affiants over the phone nor tried in any manner to verify the statements. USCIS is not required to contact affiants to verify the veracity of the testimony. The affidavits submitted do not contain sufficiently detailed descriptions to establish the reliability of their assertions. Upon review, the evidence submitted with the appeal does not overcome the director's concerns regarding the lack of evidence proving the applicant's entry prior to January 1, 1982 and continuous residency in an unlawful status throughout the requisite period. The declarations, while providing some evidence of the applicant's presence in the United States during some part of the requisite period, are 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. The declarations do not establish the applicant's claim that he resided in the United States for the entire requisite period.

In the instant case, 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.

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