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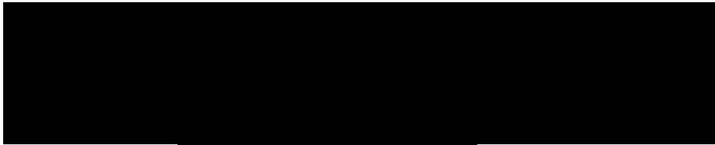
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 280 12399

Office: LOS ANGELES

Date: **MAY 13 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:



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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the director should have interviewed the applicant's sister and brother-in-law who had traveled from Texas to Los Angeles, California for the applicant's interview on November 1, 2006. Counsel argues that the director prevented the appellant from presenting the testimony of these witnesses and then denied his application for lack of their evidence. Counsel argues the denial was based solely on the applicant's inability to provide evidence other than affidavits, and the United States Citizenship and Immigration Services failed to take the opportunity to interview two crucial witnesses who would have established applicant's continuous presence in the United States. Counsel submits addition documentation 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 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)(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) 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).

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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

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 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.

The pertinent evidence in the record is described below.

1. Notarized declarations from [REDACTED] the applicant’s sister and her husband [REDACTED] who state that the applicant came to live with them on December 25, 1981 when he was nine years old at [REDACTED], Fort Stockton, Texas. They further state that he resided with them until September 1986 when he moved to live with his cousin in Van Nuys, California. They state that they did not send the applicant to school in Texas because the school was so far away, his sister did not then know how to drive and they lived in a rural area of Texas with no transportation.
2. A notarized statement dated April 6, 2007 from [REDACTED] who states she has known [REDACTED] and [REDACTED] from December 1981 to 1983 as they were tenants in her apartment which is on the back of her house at [REDACTED] Stockton, Texas.
3. A notarized statement from [REDACTED] who states the applicant was his neighbor from 1982 to 1986.
4. Unsigned letters from [REDACTED] and [REDACTED] who state they have known the applicant since 1982.
5. A declaration from [REDACTED] who states she knows the applicant has resided in the United States since 1986.
6. An unsigned letter from [REDACTED] who states she has known the applicant since 1986.

7. A letter from [REDACTED] owner of Pizza Number Uno who states he has known the applicant since 1986. He further states that the applicant came looking for employment but he was too young so he hired him to clean the parking structure and to run errands.
8. A letter from [REDACTED], president of the Lamplighter Restaurant in Sherman Oaks, California who states the applicant worked for the restaurant and that he has known him since 1986.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The notarized declarations from [REDACTED] and [REDACTED] (Item # 1 above) are not credible because [REDACTED] Fort Stockton, Texas, is in the heart of the city and the nearest public elementary school, Comanche Elementary School, which was built in 1953 was operating within a mile of their residence in late 1981 through 1986. Although they claim to have rented their apartment from [REDACTED] (Item # 2) from December 25, 1981 until September 1986, their landlord only knew them from December 1981 to 1983. The unsigned letters and the declaration (Items # 3 through # 6) have been reviewed. These documents are not sufficiently probative to establish the applicant's continuous residence in the United States from January 1, 1982 through the requisite time period.

On his Form I-687, the applicant did not list Pizza Number Uno (Item # 7) as a place of employment. Additionally, the employment verification letters from [REDACTED] and [REDACTED] (Items # 7 and # 8) do not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i).

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted employment and residential histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

An alien who has been convicted of three or more misdemeanors or a felony in the United States is ineligible to adjust to temporary resident status. 8 C.F.R. § 245a.3(c)(1).

According to a final court disposition in the record, the applicant was convicted of a violation of section 164.045 of the Oregon Revised Statutes, theft in the second degree, on April 26, 2005. This single misdemeanor conviction does not render the applicant ineligible for status as a temporary resident. [REDACTED]

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