



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HOUSTON

Date:

MAY 18 2009

MSC-05-001-10096

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Houston. 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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was not credible to support the applicant's claim of continuous and unlawful residence in the United States since before January 1, 1982 and throughout the requisite period. The director also found conflicting information about the applicant's residence in the United States from the affiants.

On appeal, counsel for the applicant asserts that the applicant has submitted credible evidence, sufficient to approve the application. Further, counsel indicates that there are no inconsistencies in the record.

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)(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 burden is upon the applicant to prove 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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.

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 (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 here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided continuously in the United States since before January 1, 1982 and throughout the requisite period.

During his interview with a United States Citizenship and Immigration Service (USCIS) officer on October 12, 2006, the applicant stated that he had resided and worked in the United States continuously since 1976.¹ To show that he has resided and worked in the United States continuously since 1976, the applicant submitted various documents including photocopies of his tax returns from 1989 to 2003, numerous receipts, pay stubs, checks, bank statements, and letters from insurance and mortgage companies. Upon review, the AAO agrees with the director that these documents are not related to the requisite period, thus they will not be considered as evidence of the applicant's eligibility for the benefit sought.

The applicant also submitted numerous affidavits as evidence of his continuous residence in the United States since before January 1, 1982. [REDACTED] claims in one of his affidavits that he has known the applicant since 1983 but provides no detailed information as to how he met the applicant, how he dated his acquaintance with the applicant, or states with specificity where the applicant resided in the United States during the time specified in his affidavit. In another

¹ The evidence of record shows that the applicant was admitted to the United States as a B-2 visitor on June 12, 1978.

affidavit, [REDACTED] states that he worked with the applicant as a construction worker from May 1986 to August 1989. The applicant's claim of continuous residence in the United States since 1976 is weakened by [REDACTED] comment when he was called by an immigration officer. Mr. [REDACTED] stated to the immigration officer on the telephone on December 20, 2006 that he first met the applicant in 1990 and thought that the applicant first came to the United States between 1987 and 1989.

[REDACTED] and [REDACTED] indicate in their joint affidavit that the applicant is their friend and that he has resided in the United States since 1980. When contacted by an immigration officer on December 20, 2006, [REDACTED] stated that he first met the applicant in 1984 or 1985 when the applicant came as a customer to the tire shop where he worked at the time. This statement is in direct conflict with the applicant's testimony during the interview in which he stated that [REDACTED] and [REDACTED] were customers when he worked for a tire shop.

[REDACTED] states in her sworn statement that the applicant worked at Martinez Tire Shop from June 1981 to August 1986. However, during the interview, the applicant indicated to the interviewing officer that he worked for Martinez Tire from 1976 to 1981, inconsistent with the information provided by [REDACTED] in her affidavit. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. Further weakening the probative value of the affidavit from [REDACTED] is the affiant's failure to include specific information about the applicant's employment and residence in the United States as prescribed by the regulations.

Both [REDACTED] and [REDACTED] claim in their joint affidavit that they have known the applicant since June 1981 when the applicant started to work at their parents' business, Martinez Tire Shop. Neither [REDACTED] nor [REDACTED] offers detailed description of the events and circumstances of the applicant's life during the requisite period. Their reference to having known the applicant since 1981 is not persuasive as evidence of the applicant's claim of continuous residence in the United States since before January 1, 1982.

Both [REDACTED] and [REDACTED] state in their sworn statements that the applicant has resided in the United States since 1981 but fail to describe with sufficient detail how they first met the applicant in the United States, how they dated their acquaintance with him, or where the applicant resided during the requisite period. Because the affidavits lack relevant detail, they lack probative value and have minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

Similarly, the affidavits from [REDACTED] and [REDACTED] are not probative since the affiants fail to offer concrete information about the applicant's whereabouts during the requisite period. 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. Considered individually and together, the evidence presented does not establish that the applicant resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The noted inconsistencies, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of his 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.