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U.S. Citizenship
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FILE:

MSC 06 098 15764

Office: LOS ANGELES

Date:

NOV 18 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, California, and 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 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 that he has continuously resided in the United States since his first entry in 1979 and he has submitted sufficient documentation establishing continuous residence in the United States from 1986 to 1988. The applicant provides an additional list of current addresses and telephone numbers of the affiants who had provided affidavits.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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.* 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 or petitioner 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit from [REDACTED] who attested to the applicant’s residences in California from July 1979 to January 1981 in Sherman Oaks; from February 1981 to May 1982 in North Hollywood; and from June 1982 to May 1989 in Inglewood. The affiant indicated that he and the applicant were “working in the same cleaning company before Major Leage Maintenance [sic] now Diversified Maintenance Service.”
- An affidavit from [REDACTED] who attested to the applicant’s residences in California from February 1981 to May 1982 in North Hollywood and from June 1982 to January 1990 in Inglewood. The affiant indicated that she is a coworker of the applicant.
- An affidavit from a cousin, [REDACTED] who attested to the applicant’s residences in California from February 1981 to May 1982 in North Hollywood and from June 1982 to November 1989 in Inglewood. The affiant indicated, “when he [the applicant] came he found me.”

An affidavit from [REDACTED] who attested to the applicant’s residence in California from 1988 to 1990 in Inglewood. The affiant indicated that he and the applicant worked at the same company.

- Affidavits from [REDACTED] who attested to the applicant's residences in California from February 1981 to May 1982 in North Hollywood and from June 1982 to January 1990 in Inglewood. The affiant indicated she met the applicant through her parents when he was working for Major League Company. The affiant attested to the applicant's moral character.
- An affidavit from [REDACTED] who attested to the applicant's residences in California from February 1981 to May 1982 in North Hollywood and from June 1984 to March 1989 in Inglewood. The affiant indicated he was a coworker of the applicant.
- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in California from June 1984 to March 1989 in Inglewood. The affiants indicated they were neighbors of the applicant and knew the applicant from family members.
- An affidavit from [REDACTED] who attested to the applicant's residence in California from May 1982 to February 2006 in Inglewood. The affiant indicated the applicant is married to a member of her family.
- An affidavit from [REDACTED] former owner/president of Major League Maintenance Services, Inc., in Inglewood, California. The affiant indicated that the applicant was in his employ under the aliases [REDACTED] and [REDACTED] from 1981 to 1987.
- A California identification card issued on April 10, 1980.

The applicant provided several of his U.S. Individual Tax Returns, Form 1040A, which reflected he had six daughters and four sons (two of the children were listed with a year of birth in 1984 and 1986).

The director issued a Form I-72 dated June 1, 2007, which requested the applicant to submit the birth certificates for all of his children. The applicant, in response, asserted that the birth certificates were not available as the children listed on the tax returns were not his; they belonged to his relatives who resided in Mexico. The applicant asserted that he provided financial assistance to the children.

The applicant's response is questionable as nothing prevented him from listing the children as nieces and nephews as he did for other relatives on his income tax returns for 1997, 1998 and 1999. The applicant has not submitted any credible evidence to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to a Form I-72 dated June 19, 2007, the applicant submitted a list of the affiants' current addresses and telephone numbers.

The director determined the probative value of the evidence was limited as none of the affiants provided evidence of their residence in the United States, or evidence of any interaction between the applicant and the affiants during the requisite period. The director concluded that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on July 20, 2007.

On appeal, the applicant provides an additional copy of his California ID card and asserts that he has not received the printout he requested on June 23, 2007, from the Department of Motor Vehicles. The applicant also provides:

- Identification documents and supporting documents to establish some of the affiants' residences in the United States during the requisite period.
- An additional affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] "during February to May 1981" and at [REDACTED] from June 1984 to February 1989.
- An additional affidavit from [REDACTED], who indicated that the applicant has been a friend of her family for over 25 years and attested to the address of residence during that time at [REDACTED]

The statements issued by the applicant have been considered. However, the documents submitted do not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status during the requisite period.

[REDACTED] in his subsequent affidavit, indicates that the applicant resided with him in 1981 and from June 1984 to February 1989. However, in his initial affidavit, the affiant made no reference that the applicant resided with him; the affiant only indicated that the applicant was a co-worker. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED] [REDACTED] has been submitted to resolve his contradicting affidavits.

The employment affidavit from [REDACTED] has little evidentiary weight or probative value as the affiant failed to provide a telephone number or address and, therefore, the affidavit is not amenable to verification by the U.S. Citizenship and Immigration Services.

The affidavit from [REDACTED] appears to have been altered; the year the affiant attested to the applicant's residence in Inglewood appears to have been changed from 1992 to 1982.

The remaining affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the

applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.