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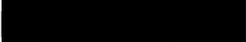
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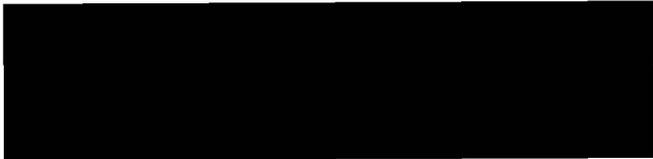
IN RE:

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.

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, Chicago. 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 that the director denied the application without considering or giving proper weight to the documentation presented. Counsel submits new information to support the continuous presence of the applicant in the United States.

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)(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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1981.
2. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
3. A notarized statement from [REDACTED] who states he came to the United States permanently in 1980 and he knows the applicant came a year later in 1981.
4. A notarized statement from the applicant who states he and his brother lived together at [REDACTED] from 1981 to 1982, [REDACTED] from 1982 to 1983 and at [REDACTED] from 1983 to 1986.
5. A notarized statement and a letter from [REDACTED] the applicant’s brother, who states that he and the applicant lived together in Chicago, Illinois, at [REDACTED] from 1981 to 1982, [REDACTED] from 1982 to 1983 and at [REDACTED] from 1983 to 1986.
6. A notarized statement and a letter from [REDACTED] the applicant’s sister-in-law, who states she met the applicant in 1981 when he was living with his brother at [REDACTED] in Chicago, Illinois. She further states that when she and the applicant’s brother [REDACTED] married in 1986, they moved back to the [REDACTED] of [REDACTED] where her husband had lived with the applicant from 1982 until 1983.
7. The applicant’s lease for [REDACTED] in Chicago, Illinois, from October 1, 1986 until September 30, 1987.

8. A applicant's lease for [REDACTED] for [REDACTED], from November 1, 1986 to October 30, 1987.
9. A letter from [REDACTED] of Our Lady of Grace Church in Chicago, Illinois, who states the applicant has been a parishioner of the church since 1983.
10. An employment letter from [REDACTED] at The Chelsea House, a retirement center, who states the applicant was employed at The Chelsea House from 1976 to 1979 and at The North Shore Hotel for two years prior to his employment at The Chelsea House.
11. An employment verification letter from [REDACTED] of Operations at The North Shore in Evanston, Illinois, who states the applicant was an employee of Irmco Properties and worked at The Chelsea House from 1975 through 1977 and at The North Shore Hotel from 1978 through 1985.
12. Employment verification letters from [REDACTED] and [REDACTED] of the [REDACTED] in Chicago, Illinois, who state the applicant was employed by the association from May 3, 1986 to July 12, 2006.
13. The applicant's Social Security Administration (SSA) statement dated October 4, 2006, showing earnings beginning in 1985. The applicant's Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Returns, for 1986, 1987 and 1988.
14. The applicant's IRS Form W-2, Wage and Tax Statements, from 777 Condominium Association for 1986, 1987 and 1988.
15. The applicant's State of Illinois Form IL-1040, Illinois Individual Income Tax Returns, for 1987 and 1988.
16. The applicant's pay slips from [REDACTED] starting with the pay period ending April 27, 1985.
17. The applicant's bills from Illinois Bell dated December 10, 1986 and December 10, 1987, his bills from Peoples Gas in Chicago, Illinois, dated December 12, 1986 and February 11, 1987 and his bills from Commonwealth Edison for the period from November 3, 1986 to December 2, 1986.
18. The applicant's United States Postal Service Form 3806, Receipt for Registered Mail, showing he sent an article to Mexico from Chicago, Illinois, on May 1, 1987.

[REDACTED] and [REDACTED] (Items # 1 and # 2 above) claim to have known the applicant for a substantial length of time, in this case

since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. [REDACTED] (Item # 3) states he came to the United States permanently in 1980 and he knows the applicant came a year later in 1981. However, [REDACTED] (Item # 11) states the applicant was employed in the United States as early as 1975.

On his Form I-687, the applicant stated he resided at [REDACTED] from November 1981 to July 1985. However, in their notarized statements (Items # 4 through # 6), the applicant, [REDACTED] and [REDACTED] stated that he resided at [REDACTED] from 1981 to 1982, [REDACTED] from 1982 to 1983 and at [REDACTED] from 1983 to 1986. On his form I-687, the applicant stated that he resided at [REDACTED] from July 1985 to July 1987. However, he submits a lease (Item # 7) for a unit at [REDACTED] from October 1, 1986 until September 30, 1987 and a lease (Item # 8) for a unit at [REDACTED] from November 1, 1986 to October 30, 1987. On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list Our Lady of Grace Church (Item # 9).

The employment verification letters (Items # 10 through # 12) 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 as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The applicant's SSA statement (Item # 13) dated October 4, 2006, does not support his employment claim on his Form I-687 that he worked at The North Shore Hotel from November 1981 to March 1985. Based on the applicant's SSA Statement, W-2 forms, tax returns, pay stubs, utility bills and his United States Postal Service Form 3806 (Items # 13 through # 18), the AAO accepts that he was present in the United States for a part of the requisite period.

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 affiliation 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.

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