



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent ~~clearly~~ unwarranted
invasion of personal privacy

PUBLIC COPY

41

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES
MSC 06 089 13087
MSC 08 078 10887 – APPEAL

Date: **OCT 16 2009**

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: SELF-REPRESENTED

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 J. 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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since February 1980, 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 on December 28, 2005. The director denied the application, finding 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.

On appeal the applicant asserts that he has submitted sufficient credible evidence to establish he meets the continuous unlawful residence requirement for the requisite period. The applicant does not submit additional evidence with the appeal.

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) 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 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. 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, 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

The issue in this proceeding is whether the applicant (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. Here, the applicant has failed to meet his burden.

The record reflects that the applicant has submitted conflicting statements and documents in support of his application. On the Form I-687 the applicant filed in 2005, the applicant indicated that he entered the United States in 1980. In response to question # 33 requesting applicants to provide their employment in the United States since entry, the applicant indicated the following:

- Self-Employed gardener, from February 1980 through January 1986;
- Sunrise Orchard Inc., gardener, from May 1986 to January 1980; and
- Genstar Roofing Products, laborer, from January 1989 to 1997.

The applicant submitted photocopies of two pay stubs from Sunrise Orchards for pay periods August 26, 1986 through September 1, 1986; and September 9, 1986 through September 15, 1986. The applicant also submitted a statement by [REDACTED] stating that the applicant was employed by Sunrise Orchards, Inc. from May 1986 to January 1987

On the Form G-325A the applicant completed on October 5, 2001, and submitted with Form I-485 (application to register permanent resident or adjust status) on October 9, 2001, the applicant indicated the following as his employment information during the requisite period:

- Texas Construction, Bolin, Texas, construction, from April 1983 to May 1986;
- Sunrise Orchard, Inc., Indiana, fruit cutter, from May 1986 to January 1989; and
- Structural material, Sun Valley, California, labor, from January 1989 to January 1997

On a statement dated November 19, 2007, which the applicant submitted with the appeal, the applicant stated in response to the director's request for copies of his tax statements from the Social Security Administration (SSA) that "during the time in question I was employed at several different locations for short periods of time. Due to this I was not given W-2s, so was unable to file, therefore no record of me exist in the files of the [SSA] for that period in time.

The employment information provided by the applicant on the Form I-687 is contrary to the employment information provided by the applicant on the Form G-523A dated October 5, 2001. The contradictory information regarding the applicant's employment history calls into question the veracity of the applicant's claim that he has resided continuously in an unlawful status from before January 1, 1982 through the requisite period.

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 without 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 evidence also reflects on the reliability of other evidence in the record. *See id.*

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting primarily of – statement of employment, a series of affidavits from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, and photocopies of several envelopes – is suspect and not credible.

The affidavit of employment by [REDACTED] dated September 23, 1991, stating that the applicant was employed by Sunrise Orchards Inc. does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statement is not written on the company's letterhead and is not signed by a company official with his title specified. The statement did not indicate the applicant's address during the period of employment and did not indicate whether

the information about the applicant was taken from company records, did not indicate where the records are kept and whether such records are available for review. The statement did not indicate the applicant's duties and responsibilities in the company. Although the applicant submitted copies of two pay stubs from Sunrise Orchards Inc, they do not bear the applicant's name and therefore will not be assigned to the applicant. The affidavit is not supplemented by any earnings statements, or tax records demonstrating that the applicant was actually employed during any of the years claimed. In view of the substantive shortcomings, the affidavit of employment has little probative value. It is not persuasive evidence that the applicant resided in the United States before January 1, 1982 through the requisite period.

The affidavits in the record from individuals who claim to have lived with or otherwise known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats with very little input by the affiants. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants did not provide documents to establish their own identities and residence in the United States during the requisite period. Additionally, some of the affiants claim to have known that the applicant entered the United States in 1980 however, the applicant indicated that he did not enter the United States until sometime in 1981. For the reasons discussed above, the affidavits 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 requisite period.

As for the photocopied envelopes in the record, some have illegible postmarks that appear as if they have been altered by hand. Some of envelopes addressed to the applicant at the addresses he claimed in the United States from individuals in Mexico, have incomplete addresses while others have illegible postmark dates. None of the envelopes bear a United States Postal Service markings to show that the envelopes were received and processed in the United States before delivery to the applicant. Some of envelopes bearing United States postal stamps which were supposedly mailed by the applicant from the United States during the 1980s bear a P.O. Box address while others bear addresses that have been altered and were mailed from the United States in 1980 when the applicant was not even claiming to have been in the United States. For all the reasons discussed above, the photocopied envelopes do not appear to be genuine. They have little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 on this basis.

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