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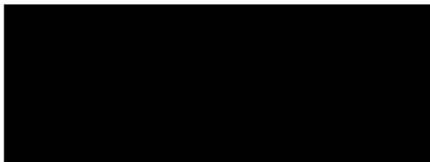
IN RE:

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. 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, Houston, Texas, 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, counsel asserts that the applicant submitted credible evidence sufficient to rebut the Notice of Intent to Deny. Counsel submits copies of the documents that were submitted in response to the Notice of Intent to Deny along with a letter of recommendation from [REDACTED]

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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted the following with his initial and current Form I-687 applications:

- Affidavits from [REDACTED], who indicated that the applicant has been residing in his home, [REDACTED], since October 1981. The affiant attested to the applicant’s absence from the United States from June 1987 to

July 1987. The affiant also submitted a letter dated September 15, 1996, attesting to the applicant's employment at his store, M&M Food Market, from 1987 to 1989.

- Affidavits from [REDACTED] and [REDACTED] who attested to the applicant's absence from the United States from June 1987 to July 1987.
- A letter dated June 30, 1989, from [REDACTED] of Oriental Rugs Gallery in Houston, Texas, who indicated that the applicant was employed from April 1985 to June 1989.
- Affidavits from [REDACTED] and [REDACTED], who indicated that they have known the applicant since 1984 and 1985, respectively and attested to the applicant's residence at [REDACTED]. Mr. [REDACTED] indicated that when he came to the United States in 1984, the applicant was residing with his brother. [REDACTED] indicated that he met the applicant at a birthday party.
- An affidavit from [REDACTED] who indicated that he met the applicant at a restaurant in 1982 and has remained friends since that time. The affiant attested to the applicant's residence at [REDACTED].
- An affidavit from [REDACTED], who indicated that he has known the applicant since 1985, and attested to the applicant's residence at [REDACTED] Texas. The affiant indicated that the applicant bought furniture from his store.
- Several rent receipts dated September 1, 1982, during 1983 and July 1, 1985.
- A letter dated July 30, 1990, from [REDACTED] of Tradium International in Houston, Texas, who indicated from October 1981 to March 1985, the entity had been "dealing with [the applicant] on a variety of auto merchandise. [The applicant] always acted as a broker and, on each transaction we paid him commission in cash as he never operated a company account."
- Letters from [REDACTED] in Houston, Texas, who indicated that the applicant was in his employ as a laborer from January 1982 to October 1985.

The record reflects that the applicant filed a Form I-485, Application for Permanent Resident Status under the Legal Immigration Family Equity (LIFE) Act, on March 28, 2002.¹ At the time of the applicant's LIFE interview on September 27, 2004, in the presence of the applicant and counsel, the interviewing officer telephoned [REDACTED], who indicated that the applicant resided with his family in 1984 or 1985. The affiant indicated that he remembered the period because his daughter was "4-5 years old" at the time.

Counsel submitted an affidavit dated October 4, 2004, from [REDACTED], who indicated that he made a serious mistake stating he had known the applicant since 1984, "as I was busy with some costumers [sic] and I really did not pay attention to the date." The affiant indicated that he has known the applicant since 1981 as stated in his initial affidavit.

¹ The Form I-485 application was denied by the director on March 2, 2005. A motion to reopen was subsequently filed, which was dismissed by the director on March 16, 2006.

On September 4, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that an attempt to contact [REDACTED] was unsuccessful as the telephone number provided remained unanswered. The applicant was also advised, in pertinent part:

The evidence that you have provided with several applications and your sworn testimony at 2 Service interviews is conflicting. You testified that you entered the United States by crossing the Rio Grande in 1981. You later testified that you crossed over the bridge in Laredo, Texas with fraudulent documents and with the assistance of an agent. You testified that you were self-employed from [sic] 1982 until sometime in 1985. You then testified that you worked as a tire fixer during the same period and provided an unverifiable statement from a tire shop as evidence. [REDACTED] provided an affidavit stating that you lived with him beginning in October 1981. When questioned by a Service officer, he changed his story, stating that you lived with him beginning in 1984 or 1985. Shortly thereafter, [REDACTED] changed his story again, stating that he actually does remember you living with him.

The evidence that you have presented consists mostly of affidavits that cannot be verified, receipts that appear to be contrived and sworn testimony that is not credible.

Counsel, in response, submitted an affidavit from [REDACTED] dated September 27, 2007, which reiterated the assertions made in the affidavit of October 4, 2004. Counsel also submitted a declaration from the applicant, who reaffirmed his claim to have entered the United States in October 1981. The applicant asserted, "I admit I am not sure of the exact location of my entry so I may of said Laredo one time and near Laredo another time." In regards to his employment, the applicant asserted that he was self-employed from 1981, but also worked for [REDACTED] until 1985. The applicant stated, "these two statements do not contradict each other since they are both true." In regards to [REDACTED] testimony, the applicant stated, "I think he has adequately explained any conflict in regard to his testimony."

The director determined that the applicant's response was insufficient to rebut the Notice of Intent to Deny. 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 October 15, 2007.

The statements issued by the applicant and counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application as he has presented contradictory and inconsistent documents, which undermines his credibility.

The employment letters from [REDACTED] and [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, [REDACTED] and [REDACTED] failed to declare whether the employment information was taken from company records, and identify the location

of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Furthermore, the employment letter from Mr. [REDACTED] raises questions to its authenticity as the applicant did not claim on his initial or current Form I-687 application employment with this individual.

[REDACTED]'s subsequent claim of lack of focus conflicts with his seemingly unambiguous recitation of the facts, i.e. the age of his child as point of reference, in determining the applicant's dates of cohabitation.

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.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

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.