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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: HOUSTON
[Redacted] - consolidated herein]
MSC-05 188 12305

Date:

SEP 02 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:
[Redacted]

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.

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 in Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of El Salvador who claims to have lived in the United States since before January 1, 1982, 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 April 6, 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 counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for the duration of the requisite period.

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. The AAO determines that the applicant has failed to meet his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. On a prior Form I-687 dated January 24, 1994, the applicant indicated that he entered the United States in January 1982. The applicant provided the following as his employment information in the United States:

- Spoons Restaurant Inc., Valley Forge Road, Houston, Texas, cook, from May 1985 to June 1986; and

- Black-Eyed Pea Restaurant, S. Mason, Houston, Texas, cook, since July 1982.

On the Form I-687 he filed in April 2005, the applicant indicated that he entered the United States in 1981. The applicant indicated that he was employed by Black-Eyed Pea restaurant in South Manson, Texas, as a cook since 1981. It is noted that the applicant submitted two letters from Black-Eyed Pea Restaurant dated December 14, 1993 and December 8, 2004, in support of his application. It is further noted that the two letters, signed by three different individuals within the organization, provided contradictory information about the applicant's employment with the company. The contradictory information calls into question the credibility and the reliability of the letters as credible evidence of the applicant's residence in the United States during the requisite period.

The contradictory statements and documents discussed above, regarding the applicant's entry into the United States (1981 or 1981) and his continuous residence in the country, calls into question the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country 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. *See 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.*

The AAO notes that the record reflects arrest records from the Houston Police Department showing that the applicant was arrested on May 6, 1985 and on April 29, 1987, for driving while intoxicated. The arrest documentation is credible evidence that the applicant has been residing in the United States from May 1985 onwards. However, the arrest documentation is not sufficient evidence to establish the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period. As the applicant has provided contradictory information regarding his entry into the United States (1981 or 1982), and the applicant has failed to submit any objective documentation to establish his entry into the United States, the AAO will examine the documentation submitted by the applicant into the record to determine if they are sufficient to establish that the applicant meets the continuous residence requirement for the duration of the requisite period.

The record includes two letters of employment from Black-Eyed Pea Restaurant in Houston, Texas. The first letter dated December 14, 1993, was signed by [REDACTED] as the human resources manager. Ms. [REDACTED] states that the applicant is currently been employed by the restaurant since 1993, that the applicant was previously employed from January 27, 1988 to February 9, 1991. A handwritten note to the letter, signed by [REDACTED] as the assistant manager, states that the applicant has been rehired more than once, and that the information about his first hire is no longer in their computer. The second letter dated December 8, 2004, was signed by [REDACTED] as the general manager. Mr. [REDACTED] states that the applicant has been

employed at the restaurant since 1981. The above letters of employment do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) because they did not identify the applicant's address at the time of employment; did not declare whether the information was taken from company records; and did not indicate the location of such records and whether they were available for review. Nor are the letters accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that he was actually employed during any of the years in question. Additionally, the letters of employment is contradictory to each other and contradictory to the employment information provided by the applicant on the two Forms I-687 he filed in 1994 and 2005 respectively. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, the employment letters have little probative value. They are not persuasive evidence that the applicant resided continuously in the country for the duration of the requisite period.

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 – affidavits from individuals who claim to have resided with, worked with or otherwise known the applicant in the United States during the 1980s, as well as photocopied envelopes addressed to the applicant in the United States from individuals in El Salvador – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

The affidavits in the record have minimalist or fill-in-the-blank formats with little inputs by the affiants. The affiants, who claim to have known the applicant since 1982, 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 affiants did not provide any documentation to establish their own identities and residence in the United States during the 1980s. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships, with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that 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, they have little probative value. The photocopied envelopes have illegible foreign postmark dates and no stamp or other official marking from the United States Postal Service to show that the envelopes were received and processed in the United State before delivering them to the applicant at the address indicated on the envelopes. Furthermore, the envelopes were addressed to the applicant at [REDACTED] Houston, Texas; however, the applicant did not claim the Valley Forge address as any of his addresses in the United States during the 1980s or at any other time. Thus, the envelopes do not appear to be genuine. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

The envelopes are not persuasive evidence of the applicant's continuous residence in the United States for 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.