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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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[Redacted]

FILE: [Redacted]
MSC-06-069-12144

Office: DALLAS

Date:

SEP 14 2009

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Resident Status under 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, or *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 of the Dallas office 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence on appeal. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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) 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.

¹ 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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (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 documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several witness statements. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant has submitted three letters from [REDACTED], who states that he has known the applicant since 1981 and knows that the applicant has been in the United States since that time.

The record contains two letters from [REDACTED], who states that he has known the applicant since 1983.

The applicant has submitted an affidavit and two letters from [REDACTED], who states that he has known the applicant since they were children in El Salvador, and met the applicant again in the United States in 1982. The affiant also states that the applicant has been in the United States since 1981, but he does not state the basis for his knowledge of this information.

The record contains a letter from [REDACTED] who states that at the end of 1981 the applicant lived with the witness in an apartment. The witness states that while he was at work someone else took care of the applicant, but he does not state who took care of the applicant. In addition, the witness does not state the address at which he lived with the applicant, nor for how long he lived with him.

The applicant has submitted an affidavit and a letter from [REDACTED] who states that he has known the applicant since they were children, and met the applicant again in the United States in 1982. The affiant also states that the applicant has been in the United States since 1981, but he does not state the basis for his knowledge of this information.

The record contains a letter from [REDACTED] who states that she has known the applicant since November 1981 when she met him in Houston, Texas.

The applicant has submitted a letter from [REDACTED] who states that he has known the applicant since 1982. The witness also states that the applicant has been in the United States since 1981, but he does not state the basis for his knowledge of this information.

The record contains the affidavit of [REDACTED], who states that she has known the applicant since she met him at a family reunion, but she does not say where or when she met the applicant. The affiant also states that the applicant lived with her and her family at [REDACTED] in Houston from September 1981 to 1984. This is inconsistent with the applicant's

testimony in the instant I-687 application that he resided at [REDACTED] in Houston from September 1981 to October 1985.²

The applicant has submitted the affidavit of [REDACTED], who states that she has known the applicant since meeting him at a Christmas party in Houston in December 1981. The affiant also states that the applicant's residence address as being at 505 Thorton in Houston, Texas as of the date the affidavit was attested to on May 24, 1988. However, the applicant does not list this address as a residence address on the instant I-687 application.³

The record contains a fill-in-the-blank affidavit from [REDACTED] who states that he has known the applicant since October 1981.

The applicant has submitted a letter from [REDACTED], the wife of [REDACTED], who states that she has known the applicant since 1982.

The record contains an employment verification letter from [REDACTED] manager of the Guadalajara Club in Houston, who states that he hired the applicant, who worked for the club doing odd jobs from February 1984 to October 1985. However, the applicant does not list any employment with the Guadalajara Club on the instant I-687 application.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

² On appeal, counsel for the applicant states that the applicant's testimony regarding his residence address in 1981 should be corrected to [REDACTED] in Houston for the period of time 1981 to 1985. In addition, in the initial I-687 application filed in 1988 to establish the applicant's CSS class membership, the applicant stated that he lived at [REDACTED] in Houston from May 15, 1981 to February 1983.

³ The applicant lists an address at [REDACTED] in Houston, Texas at the time of filing the initial I-687 application in 1988.

In addition, the employment verification letter of [REDACTED] fails to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letter does not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to his own recollection or any records he or the company may have maintained. Lacking relevant information, the letter regarding the applicant's employment fails to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, this document has minimal probative value.

The remaining evidence in the record is comprised of the applicant's statements, the instant I-687 application, a Form I-485 application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, and the applicant's initial Form I-687 application filed in 1991 to establish the applicant's CSS class membership.

The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding his residences and employment in the United States during the requisite statutory period.

The record reveals that in the instant I-687 application the applicant listed residences in Houston at [REDACTED] from September 1981 to October 1985 and on Eagle Pass from November 1985 for the duration of the requisite statutory period. In addition, the applicant listed employment as a construction worker with [REDACTED] from February 1982 to November 1984, and as a poultry worker, first with Albany Water Company from January 1985 to December 1986, then with Main Packing Company from February 1987 for the duration of the requisite statutory period.

However, in the initial I-687 application the applicant listed residences in Houston at [REDACTED] from May 15, 1981 to February 1983, on [REDACTED] from February 1983 to January 1987, then at [REDACTED] from January 1987 for the duration of the requisite statutory period. In addition, the applicant listed employment as a laborer with Albany Company from January 1984 to October 1985, then as a packer with Main Packing Company from October 14, 1985 until the date of filing the application on May 3, 1988.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant resided and worked at a particular location in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United

States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

As stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of 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.