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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

41

[REDACTED]

FILE:

[REDACTED]

Office: DALLAS

Date:

SEP 23 2009

MSC-06-082-13578

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Dallas, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United States until he or his parent filed or attempted to file the application for temporary resident status.

On appeal, counsel for the applicant contends that the applicant has submitted numerous documents and affidavits, sufficient to meet his burden of proof.

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)(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).

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. 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, "[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 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 principal issue in this proceeding is whether the applicant has furnished sufficient credible evidence to show that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he or his parent filed or attempted to file the application for temporary resident status.

As evidence of his continuous residence in the United States since before January 1, 1982, the applicant submitted various documents including photocopies of pay stubs issued in 1986 from American Produce & Vegetable Co., a photocopy of a receipt dated August 7, 1982, and a photocopy of a bus schedule published in 1978. The applicant also provided numerous affidavits, letters, and witness statements from friends, relatives and former employers.

The applicant submitted copies of 1986 pay stubs from American Produce and Vegetable Company. The director noted that the 1986 pay stubs from American Produce & Vegetable Co. had no name or other identification that could be tied to the applicant. Additionally, the director found that the social security number [REDACTED] on each of the pay stubs did not belong to the applicant. On appeal, counsel contends that the applicant was undocumented in 1986 and that he used this social security number to work, but neither counsel nor the applicant submits additional evidence to rebut the director's finding. Without further information identifying the applicant with the social security number, the pay stubs are not probative as evidence of the applicant's residence in the United States during the requisite period.¹

¹ The director's notes indicate that the Social Security Administration has not credited the applicant with the earnings under the noted social security number.

The director determined that the receipt and the bus schedule had no probative value. Neither document contains the name or address of the applicant. The AAO agrees.

██████████ and ██████████ issued a signed or sworn statement indicating that the applicant worked in the United States during the requisite period. ██████████ declares that the applicant was an employee of ATRA Corporation from February 1980 to October 1984.

██████████ asserts in his letter that the applicant worked as a forklift driver for American Food Service from 1985 to the middle of 1987. ██████████ claims in his letter that the applicant worked at Elite Warehouse Services between February 1988 and November 1989. The applicant, however, claimed in his Form I-687 he worked for Standard Fruit during this period. None of the affiants includes specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). None specifically states where the applicant resided at the time of his employment, what his specific duties with the company were, whether or not the information was taken from official company records, and where such records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. As the statements do not comply with the regulations, they will be given nominal weight.

██████████ wrote a statement for the applicant certifying that the applicant has been an active member of the Cathedral Shrine of the Virgin Guadalupe Parish since the early 1980's. The applicant was also an active member of the Cathedral Jovenes Group, a young adult club of the church, according to ██████████. The statement does not contain specific information about the applicant's membership in the church as set forth by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the statement does not include the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during his membership period, and it further fails to explain how the author knows the applicant and where he acquired the information relating to the applicant's membership in the organization. Further, the church office stated on the telephone when contacted by USCIS that the applicant did not become a member of the church until 2002. On appeal, counsel claims that the applicant might not have been registered as a member during the requisite period, but he attended the church regularly with his father. As the letter conflicts with other evidence of record and does not contain sufficient details, it will be given nominal weight.

Together, ██████████, ██████████, and the applicant issued an affidavit generally stating that they have resided in the United States since before January 1, 1982. The affidavit states the applicant and his father first entered the United States in 1979 before ██████████ and ██████████, the applicant's younger sisters, came in 1981. It also describes how the affiants and their father attempted to file the application for temporary resident status in early 1988. The affidavit claims the applicant and his father lived at ██████████; and at ██████████ ██████████ in Dallas, Texas, during the requisite period. The applicant, according to his Form I-687, lived at ██████████ from February 1984 to June 1985 and later on ██████████ from April 1987 to February 1999. Additionally, the affidavit mentions that the applicant was a good mechanic and that he earned his income by fixing people's cars, but the applicant did not work as a mechanic until 1990, based on his Form I-687. The lack of detail is

significant, considering that both [REDACTED] and [REDACTED] claim they have personal knowledge of the applicant's continuous residence in the United States since before January 1, 1982. The affidavit lacks probative value.

Included in the evidence submitted are 12 witness statements. All 12 witnesses simply state they are good friends of the applicant and that they have known the applicant since 1978, 1979, 1980, or 1984. Most claim they come from the same town or village in Mexico as the applicant. Some claim they worked together with the applicant for a long time or they were his neighbor, but none provides concrete detail of where the applicant lived, what he did, or how he supported himself and his family financially in the United States during the requisite period. None states with specificity how he or she first met the applicant in the United States or how he or she dates the beginning of his or her acquaintance with the applicant in 1978, 1979, 1980, or 1984. To be considered probative and credible, witness statements must do more than simply state that a witness 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because these witness statements are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's eligibility for temporary resident status.

Upon a *de novo* review, the AAO finds that individually and together, the evidence submitted does not establish the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period coupled with the lack of detail in the evidence submitted seriously detract 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 lack of credible supporting documentation, it is concluded that 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.