U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: APR 01 2010
MSC-06-070-14752

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.

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

The director denied the application on the grounds that the applicant failed to establish that he entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988.

On appeal, counsel asserts that the director did not properly evaluate and give due weight to the evidence submitted by the applicant. Counsel asserts that the totality of the evidence shows that the applicant has satisfied the eligibility requirements for temporary resident status. The applicant requests a copy of the record of proceedings. This request was closed for failure to comply on November 8, 2008.[1]

The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). 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). The AAO has reviewed the entire record of proceedings and finds that the applicant has failed to meet his burden.

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)(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.

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[1] NRC2007020656

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 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 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 affidavits and letters, a Social Security Administration earnings report, W-2's and handwritten receipts. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The director noted several inconsistencies with the applicant's residence and employment. The director also noted that the applicant has three Mexican born children, however, on a previous Form I-687 filed on March 13, 1990, the applicant indicates that he has six children born in El Salvador.

On appeal, the applicant asserts that he has never lived or worked in Las Vegas and that he has three Mexican born children. He fails to address the remaining inconsistencies noted by the director on appeal.

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).

The AAO notes that the applicant has submitted a Social Security earnings statement, W-2 Wage and Tax Statements, and federal income tax returns. These documents provide credible evidence that the applicant resided in the United States from 1985 onward. However, the applicant has not established that he entered the United States before January 1, 1982 and resided continuously in the country through the end of 1984.

The documentation submitted by the applicant in support of his claim that he was continuously resident in the United States from before January 1, 1982 through the end of 1984 consists of the following:

- Several retail and rental receipts dated in 1984 with handwritten notations of the applicant's name and the dates of issuance.
- Affidavits and letters from nine individuals, dated in 1989 and 2001, claiming to have employed, worked with, rented an apartment to, or otherwise known the applicant at various times during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each document in this decision.

The file contains two Forms I-687 (application for status as a temporary residence), filed by the applicant in 1990 and 2005, as well as a Form G-325A (Biographic Information) filed with the applicant's Form I-485 in 2002. These forms provide contradictory information regarding the applicant's residence and employment in the United States during the 1980s. On the Form I-687 filed in 1990, the applicant listed the following addresses and employers in the 1980s:

Residences:

- , from 1980 to 1988; and
- , from 1988 to February 1990.

Employers:

- , from 1980 to 1983;
- , from 1983 to 1986;
- , from 1986 to 1987;
- , from 1987 to 1988; and
  Self-Employed from 1988 to the present (1990).

On the Form I-687 filed in 2005, the applicant listed the following addresses and employers during the 1980s:

Residences:

- , from February 1981 to September 1983;
- , from September 1983 to December 1984;
- from December 1984 to October 1985; and
- from October 1985 to May 1988.

Employers:

- , from February 1981 to December 1983;
- from February 1984 to March 1985; and
- , from March 1985 to September 1989.

On the Form G-325A completed on April 11, 2002, and filed with the Form I-485 on April 22, 2002, the applicant listed his address as , from April 1987 to February 1993, and his employer as in Culver City, California, from March 1985 to May 1990. The applicant submitted a "Self Employment letter" dated October 21, 1989, stating that he was self-employed from 1980 to 1983 and from 1988 to the present.

The conflicting information in the record regarding the applicant's residential addresses and employers during the 1980s undermines the credibility of his claim to have continuously resided in the United States from before January 1, 1982 through May 4, 1988.

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 various retail and rental receipts dated in 1984 have handwritten notations of the applicant's name and no addresses. The receipts have no date stamps or other official markings to verify the dates they were written. The rental receipt dated September 1, 1984, did not identify the address of the rental property. Thus the receipts have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the year 1984, much less from before January 1, 1982.

As for the affidavits and letters in the record, from individuals who claim to have employed, worked with, rented an apartment to, or otherwise known the applicant during the 1980s, all have minimalist formats with vague and general information. The authors provided remarkably few details about the applicant's life in the United States and their interaction with him over the years. Nor are the affidavits and letters accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationship with the applicant in the United States during the 1980s. In addition, claim that the applicant resided in the City of Inglewood, California, from 1980 to 1983 is contrary to the information provided by the applicant on either of his Forms I-687 about his residence during the same period. Likewise, claim that the applicant was her tenant in Redondo Beach California, from 1981 to 1983 is contrary to the address provided by the applicant on his Form I-687 filed in 1990 for the same period. s claim that the applicant resided at in Inglewood in 1983 and 1984 is contrary to the address provided in the 1990 Form I-687. In view of their contradictions and substantive shortcomings, 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 May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that he entered the United States before January 1, 1982, resided continuously in the United States in an unlawful status from before January 1, 1982 through the end of 1984. 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.