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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: LOS ANGELES

Date:

DEC 10 2010

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 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 because the applicant failed to establish that she entered the United States prior to January 1, 1982, and resided in a continuous unlawful status since that date through the requisite period. Specifically, the director noted several inconsistencies in the record regarding the applicant's employment during the requisite period. Also, the director determined that the applicant failed to establish that he was using an alias prior to 1987.

On appeal, counsel for the applicant asserts that the director's decision failed to properly weigh the submitted evidence. She asserts that a brief will be submitted to the AAO within 30 calendar days. As of the date of this decision, no brief has been received; therefore, the record will be considered complete. The AAO has 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 245(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. 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

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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 petitioner 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, 431 (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 established 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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of copies of pay stubs, medical documents, a traffic safety course certificate, a post-marked envelope, a workers compensation order, a California drivers license, photographs, and affidavits from thirteen individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The applicant claims that he first entered the United States in December 1980 without inspection. In support of his claim, the record contains copies pay stubs from 1981 through 1988. The majority of the pay stubs, dated 1981 through 1987, list the employee's name as [REDACTED]. One pay stub, dated in 1986, lists the employee as [REDACTED]. Only one pay stub

dated in 1988, lists the employee as the applicant, [REDACTED]. The record also contains copies of medical documents, traffic safety course certificate, a post-marked envelope, workers compensation order, and California drivers license all dated from between 1986 through 1987. All of these documents are under the name of [REDACTED].

While the above documents may establish that [REDACTED] resided in the United States during the requisite period, the record fails to establish that applicant and [REDACTED] are the same person. As stated by the director, the submitted California drivers license, issued on February 5, 1987, establishes that the applicant may have been using the alias in 1987 but not prior to 1987.

The director also noted inconsistencies in the record regarding the applicant's alleged employment during the requisite period. In his Form I-687, the applicant stated that he was employed by [REDACTED] from October 1984 to December 1986, [REDACTED] from July 1987 to October 1987, and [REDACTED] from November 1987 to December 1990. The applicant's statement raises inconsistencies with the some of the submitted pay stubs. The applicant submitted pay stubs from [REDACTED] from 1981 through 1984, [REDACTED] from 1984 through 1985, [REDACTED]

in 1987. All of these pay stubs list [REDACTED] as the employee. In his Form I-687, the applicant failed to mention that he ever worked for these companies. These inconsistencies cast doubt on the credibility of the applicant's claim.

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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistencies. The inconsistencies in the record 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. The director noted these inconsistencies in the Notice of Denial; however, neither counsel nor the applicant addressed these inconsistencies on appeal.

The record also contains several affidavits. The affidavits from [REDACTED] [REDACTED] are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion, of the requisite period. None of the above statements state that the applicant used an alias during the requisite period. These statements fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

None of the witness statements 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 have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that a declarant 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.

The record also contains affidavits from [REDACTED]. These affiants state that the applicant used the alias [REDACTED] during the requisite period; however, none of the affiants provide corroborating evidence of the applicant's alias. [REDACTED] also stated that the applicant was employed by [REDACTED] from 1981 through 1984. [REDACTED] statement is inconsistent with the applicant's Form I-687. In his Form I-687, the applicant never stated that he was employed by [REDACTED] during the requisite period.

Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have minimal probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

The record also includes several photographs that are not identifiable by person, location or date. The photographs lack probative value and, therefore, will be given little weight as evidence of the applicant's residence in the United States during the requisite period.

Based upon the foregoing, the evidence submitted in support of the applicant's claim has been found to contain several inconsistencies and to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. The applicant has failed to establish by a preponderance of the evidence that she continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.