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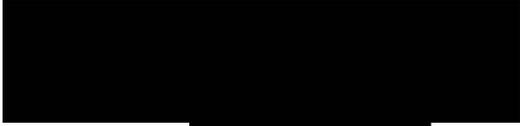
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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MSC-06-096-15578

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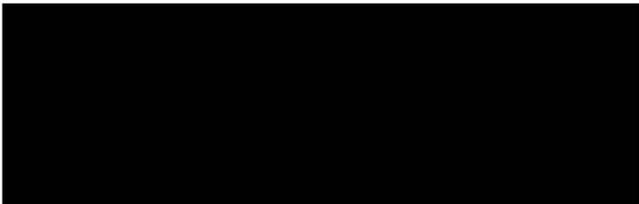
IN RE:

Applicant:



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:



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.

Elizabeth McCormack

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, Miami, 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. The director denied the application after determining 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. The director noted that the applicant failed to respond to the Notice of Intent to Deny (NOID), as requested. The director noted in the NOID that the applicant had failed to provide sufficient evidence to document his residence and physical presence in the United States throughout the requisite period. The director denied the application, finding that the applicant had not met his burden of proof that he was eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director failed to assign sufficient weight to the evidence submitted by the applicant. Counsel also asserts that the applicant did submit evidence in response to the NOID and that such evidence is probative, relevant, and substantive to the applicant's eligibility for the immigration benefit requested. The applicant requested a copy of the record of proceedings through the Freedom of Information Act (FOIA) and the request was satisfied on July 21, 2009 (NRC2008055662). The applicant does not submit any evidence on appeal.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

As noted above, the applicant must establish that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, or until he filed or attempted to file the Form I-687 application. 8 C.F.R. § 245a.2(b)(1). Any absence from the United States during this time period must be brief, casual and innocent.

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).

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 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, 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence and continuous physical presence in the United States throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted the following evidence:

- An affidavit from [REDACTED] who stated that she has known the applicant since 1980 and that she met the applicant in front of her house in Newark, New Jersey. This statement is inconsistent with the applicant's testimony made under oath during his immigration interview where he stated that he first entered the United States in April 1981 and with part 30 of Form I-687 where he indicated his first address in the United States was in Elizabeth, New Jersey from April 1981 to June 1989.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1981 and that he met the applicant when he was working for [REDACTED]. This statement is inconsistent with the applicant's Form I-687 at part #33 where he failed to list the company as one of his employers.
- An affidavit from [REDACTED] who stated that the applicant worked for his father, [REDACTED] as a body man from 1981 through 1982. The affiant fails to specify the name of the company that employed the applicant.
- An affidavit from [REDACTED] who stated that she has known the applicant since June 1981 and that she met the applicant through her brother. She further stated that she dated the applicant for three years subsequent to their meeting and broke up with him after going away to college. The affiant does not indicate that she had any contact with the applicant after 1984.
- Affidavits from [REDACTED] and [REDACTED] who stated that they have known the applicant since 1981 and that they have regularly communicated with the applicant over the years. The affiants fail to specify the applicant's place of residence during the requisite period. [REDACTED] states that the applicant worked for a few months out of the year in construction and in winters he would go to Florida. This is inconsistent with the applicant's Form I-687, where he does not indicate that he worked construction or lived in Florida during the requisite period.

The affidavits and declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Although the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they had personal knowledge of the applicant's presence in the United States. Although the applicant claims to have resided in the United States since April 1981, it is indicated on Form ETA 750, Application for Alien Employment Certification that he was employed by [REDACTED] in Pocos De Caldas, Brazil as an auto mechanic from October 1986 to May 1988. Given these deficiencies, the evidence has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982, and resided in the United States throughout the requisite period.

The inconsistencies and contradictions cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). 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 affiants' 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 were 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 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. Although counsel asserts that the applicant did submit evidence in response to the NOID sent by the director and dated December 8, 2007, the record of proceeding does not contain such evidence. The applicant has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance on documentation that is lacking in detail and that is of little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite periods 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.