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FILE: MSC-05 231 14516 Office: HOUSTON
MSC-08 256 12108 – APPEAL

Date: **JAN 27 2010**

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.

Perry J. 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 by the director in Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since before January 1, 1982, 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 on May 19, 2005. The director denied the application, finding 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.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant tin support of his claim. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period. Counsel submits additional documentation with the 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. 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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record reflects that the applicant has provided conflicting statements and information regarding his entry into the United States and his continuous residence in the country through the requisite period. On a prior Form I-687 the applicant completed on April 12, 1994, and the accompanying Form for Determination of Class Membership in CSS v. MEESE, the applicant indicated that he entered the United States illegally on March 10, 1979, and resided continuously in the country

except for two brief trips outside the United States to Mexico within the month of October 1986 and July 1987. On the Form I-687 the applicant filed on May 19, 2005, and at his interview on April 5, 2006, the applicant indicated that he first entered the United States illegally in 1981 and resided continuously in the country except for two brief trips outside the United States to Mexico within the month of October 1986 and July 1987.

The applicant, however did not account for his residence in the United States from 1979 to 1981 or how he took care of himself during those years. In response to the question #s 30 and 33 on the Form I-687, requesting applicants to list all their residence and employment in the United States since entry, the applicant provided an address starting February 1981 and employment starting from April 1981. The absence of any information or record of the applicant's residence in the United States from 1979 to at least February 1981, call into serious question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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. *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.*

In support of his claim, the submitted letters and affidavits from individuals who claim to have employed, or otherwise known the applicant in the United States during the requisite period, copies of Earnings Statements from [REDACTED] with the applicant's name and no address, dated in 1983, photocopies of envelopes which the applicant allegedly mailed from the United States to individuals in Mexico during the 1980s, as well as copies of photographs of the applicant and some unidentified individuals, which the applicant claims were taken during the 1980s.

The AAO has reviewed each document in its entirety to determine the eligibility of the applicant.

The photocopied envelopes which the applicant claims he mailed from the United States to some individual in Mexico bearing United States postmark dates in 1984 and a couple of envelopes that were addressed to the applicant from individual in Mexico with foreign postmark dates that appear to read September 16, 1985 and October 1985, do not appear to be genuine. For example, four envelopes with United States Postmark dates of January 17, January 18, February 8, and March 5, 1984, show the applicant's address as [REDACTED]. Two envelopes with United States Postmark dates of June 14, and June 25, 1984, show the applicant's address as [REDACTED]. These addresses are contrary to the addresses claimed by the applicant on the Form I-687 during the same period. The applicant indicated his address from May 1983 to April 1984, as [REDACTED] Texas; and his address from April 1984 to June 1986, as [REDACTED] Texas. The applicant did not claim [REDACTED] and [REDACTED] as any of his addresses in the United States.

As for the two envelopes with foreign postmarks, they do not bear a United States Postal Service date stamp or other official markings to show that the envelopes were received and processed in the United States before delivery to the applicant. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

The letters and affidavits in the record from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats with very few details about the applicant's life in the United States and the nature and the extent of their interaction with him over the years. The authors do not seem to have direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The letters and affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the years they claimed to have known him. The authors did not provide any documents to establish their identities and residence in the United States during the requisite period.

The notarized fill-in-the-blank statement dated March 9, 1994, from [REDACTED] who identified himself as the [REDACTED]” stating that the applicant was employed as “dishwasher Busboy” from February 1981 to February 1986, and that the information on the statement was taken from official company records, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because the statement does not provide the applicant's address, does not indicate where the company records are kept and whether such records are available for review. The statement is not written on the company's stationary and does not provide the complete address and location of the business. Thus the statement has little probative value as credible evidence of the applicant's continuous residence in the United States for the requisite period.

The Earnings Statements from [REDACTED], which the applicant submitted as evidence of his residence in the United States do not appear to be genuine because the applicant did not indicate [REDACTED], as any of his employers in the United States. Thus, the documents cannot serve as credible evidence of the applicant's residence in the United States during the requisite period. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

For all the reasons discussed above, the AAO finds that the letters and affidavits, as well as the employment documents 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 the date of filing the applicant for legalization.

As for the copies of the photographs in the record, they have little probative value. The photographs do not have official date stamps or other notation showing when and where they were taken. Even if the AAO accept that the photographs were taken in the United States, they

are not sufficient credible evidence to establish that the applicant was residing in the United States when the photographs were taken much less his continuous residence in the United States during the requisite period. The photographs are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the date of filing the application.

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.