



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1



FILE:



Office: HOUSTON

Date:

MSC-05-187-27127

MAY 04 2010

IN RE:

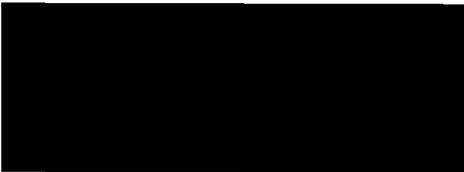
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Houston, and that 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 Class Membership Worksheet on January 6, 2006. The director determined 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the applicant's credibility was diminished by contradictory information in the record. In particular, the director indicated that the applicant filed a Form I-485 LIFE Act application on December 10, 2001. During his interview with United States Citizenship and Immigration Services (USCIS) in connection with that application, the applicant testified under oath that he was at least twice absent from the United States in excess of 45 days with the aggregate of all absences exceeding 180 days. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel contends that the director failed to give sufficient weight to the affidavits submitted and that the applicant was not absent from the United States during the periods in question.

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 be 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).

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.

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

The record shows that at the applicant's USCIS interview on April 19, 2004, the applicant testified under oath and in a signed statement that he departed the United States in 1981 to be married in Mexico in August of that year. The applicant testified that he returned to the United States in June 1982, six months after a religious wedding ceremony in December 1982. The applicant testified that he next left the United States on the occasion of the birth of his first child (listed as November 1983 on the applicant's Form I-485), and was again absent for approximately six months. Finally, the applicant testified that he traveled to and from Mexico on other occasions, remaining in Mexico for approximately two to three months each time. The record shows that the applicant was represented by counsel at the April 19, 2004 interview.

In response to the July 30, 2004 NOID, the applicant submitted an affidavit admitting to giving "erroneous information" at his interview. The applicant asserted that he "never intended to lie" but provided erroneous information because he "was very nervous and anxious." The applicant stated that he departed from the United States in August 1981 and December 1981 to attend his religious and civil marriage ceremonies respectively, but only stayed in Mexico for approximately one week on each occasion. The applicant also stated that he departed from the United States in February 1983, but was again only absent for approximately a week. Finally, the applicant asserted that he did not leave the United States again until a later departure in 1996.

On appeal, the applicant indicates that the affiant, [REDACTED], provided testimony that he employed the applicant during the periods in question and that the applicant only left work for 2 weeks in 1981. The applicant asserts that any longer absence during this time would have been indicated by [REDACTED] in his affidavit.

The AAO has reviewed the letter from [REDACTED]. The photocopied letter is on official letterhead and indicates that the company's records indicate that the applicant was employed from 1979 through January 1983 and that in August 1981 and December 1981 the applicant was "off one week." The applicant also submitted an unsigned affidavit dated January 10, 1990 from [REDACTED] stating that the applicant worked full-time for [REDACTED] from July 1979 until January 1983. The employment records are not submitted. This information is inconsistent with the applicant's statement on the Form I-687, where the applicant indicates his only absences from the United States to be in February 1981 and November 1987. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has not provided any independent, objective evidence with regard to the inconsistency noted.

As additional evidence of his residence in the United States between January 1, 1982 and April 1984, the approximate period during which—according to the applicant's testimony at his interview—the applicant was twice absent from the United States for periods in excess of six months, the applicant has submitted the following evidence of his eligibility:

1. An affidavit dated January 10, 1991 from [REDACTED] stating that she shared rent and expenses with the applicant from the time the applicant lived at [REDACTED] in South Houston in 1983 through the date the affidavit was executed. The AAO notes that the applicant does not list this address as one of his residences at part 30 of the current Form I-687. This inconsistency is not explained in the record of proceedings.
2. A letter dated October 15, 1990 from [REDACTED] stating that the applicant had performed landscaping work for her for "the past 10 years." This letter fails to comply with regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as

evidence of the applicant's residence in the United States for the duration of the requisite period.

3. Finally, the record contains numerous envelopes containing the applicant's name and address and date stamped during the relevant period. While they do constitute some evidence of the applicant's presence in the United States on the dates indicated, they do not offer sufficient proof of continuous residency to overcome the numerous deficiencies noted above.

The remaining evidence in the record, which pertains to the entire relevant period, lacks sufficient detail to be considered credible. Specifically, the applicant submits affidavits from the following individuals:

[REDACTED] and [REDACTED]. All contain statements that the affiants have known the applicant for several years and that they attest to the applicant being physically present in the United States during the required period. These affidavits fail, however, 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 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.

The applicant's explanation for the significant discrepancies between his sworn testimony at his April 19, 2004 interview and other information in the record is not accompanied by objective credible evidence resolving the inconsistencies and is inadequate.

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.