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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

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[REDACTED]

FILE:

[REDACTED]

Office: IRVING

Date: SEP 28 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, Irving, California. 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 Class Membership Worksheet. 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, the applicant asserts that he was held to an improper burden of proof.

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 demonstrate that he resided in the United States from prior to January 1, 1982 through the end of the relevant period.

The record shows that the applicant submitted a Form I-687 Application for Temporary Resident Status, to Citizenship and Immigration Services (CIS) on December 28, 2005. At part #31 where applicants were asked to list present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group, the applicant stated, "none."

The record includes multiple declarations and other documentation including an affidavit from [REDACTED] Landmark Construction and [REDACTED] dated June 4, 1990. [REDACTED] stated that he knows that the applicant worked as a laborer from 1981 to the present. This affidavit does not specifically confirm the applicant resided or worked in the United States during the requisite period. In addition, this affidavit does not conform to regulatory standards for letters from employers. Specifically, the affidavit does not include the applicant's address at the time of employment, whether the information was taken from official company records, where the records are located, and whether USCIS may have access to the records. 8 C.F.R. § 245a(d)(3)(i).

The record also includes information indicating [REDACTED] was not registered as a company in Texas until May 19, 1989. This information, without additional evidence confirming the company engaged in business as early as 1981, casts further doubt on [REDACTED]'s ability to confirm the applicant resided in the United States throughout the requisite period. It is noted that the director noted this inconsistencies in a Notice of Intent to Deny (NOID) issued on April 24, 2004, in connection with the applicant's LIFE Act application. The NOID provided the applicant with an opportunity to respond to the inconsistencies. The applicant failed to provide additional evidence confirming Landmark Construction's dates of operation, either in response to the NOID or on appeal.

The record also includes a declaration from [REDACTED] dated June 4, 1990. The affiant stated that the applicant resided at the following addresses during the requisite period: [REDACTED] from 1981 to June 1986 and [REDACTED] from July 1986 to present. The affiant indicated she was the landlord and applicant paid rent to her on a monthly basis with paid bills.

The record includes a declaration from the applicant's sister, [REDACTED] dated February 22, 2002. The declarant stated that her brother, the applicant, lived with her at the following Dallas, Texas addresses during the requisite period: [REDACTED] from 1981 to June 1986; and 4 [REDACTED] from July 1986 to January 1993. [REDACTED] attached a copy of a driver's license listing her date of birth as September 4, 1957.

The record also contains multiple declarations from individuals who failed to confirm the applicant resided in the United States during the requisite period. These include: declarations from [REDACTED]

Most declarants indicate only that they met the applicant during the relevant period, but they fail to indicate how they date their initial acquaintance, where the applicant lived during the relevant period or how they have direct personal knowledge of the applicant's continuous residence in the United States. The declarations from [REDACTED] are also inconsistent with the information provided on Form I-485. Specifically, both declarants indicated they met the applicant at [REDACTED], yet the applicant failed to list this church on Form I-485 or his Form I-687 when asked to list all affiliations or associations with churches.

The record includes an affidavit from [REDACTED] dated May 18, 2004. The affiant stated that she and the applicant met as neighbors at [REDACTED] in September of 1985.

The record also contains a copy of the applicant's identification card listing a Texas address and dated June 3, 1985.

As noted above, the applicant has provided contemporaneous evidence of residence in the United States relating to the 1981-88 period in the form of an identification card that merely confirms he resided in the United States during 1985. The applicant has submitted affidavits and declarations that fail to conform to regulatory standards, conflict with the applicant's statements, or fail to state the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed and consistent supporting 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 contradictory statements contained in the applicant's I-687 application and supporting affidavits, and the applicant's reliance upon documents with minimal probative value or documenting only one year of the requisite time period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.