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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

L1

DATE: **FEB 01 2012** Office: LOS ANGELES FILE: [REDACTED]

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:

SELF-REPRESENTED

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.

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 (Settlement Agreements), was denied by the Director, Los Angeles on December 8, 2006 noting that the applicant failed submit sufficient evidence in response to the director's notice of intent to deny (NOID) establishing his continuous physical presence during the requisite time period. The applicant filed a motion to reopen or reconsider on December 15, 2006 and the director denied the motion on April 11, 2007. On May 11, 2007, the applicant filed an appeal with the special master. The special master determined that the appeal was not properly before the special master and dismissed the appeal on July 20, 2009. The director amended his decision on February 16, 2011 and denied the application. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on November 8, 2005. On February 16, 2011, the director denied the application noting that the applicant failed to establish that he first entered the United States before January 1, 1982 and resided continuously. The director also noted many inconsistencies of record.

On appeal, the applicant states that many years have passed and he cannot remember everything that he did or all of his departures from the United States. The applicant also states that it has never been brought to his attention before that some of his evidence appears to have been altered.

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

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 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. Agreement paragraph 11 at page 6; 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

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. [REDACTED]*, 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 (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 of time.

The record of proceeding contains an employer letter on [REDACTED] Restaurants letterhead signed by [REDACTED] manager on April 27, 1994. In his letter, [REDACTED] states that the applicant was employed by [REDACTED] Restaurants from June 10, 1982 to April 11, 1988. The letter provides no other information regarding the applicant’s employment.

The letter fails to meet certain 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 letter submitted only includes the dates of employment and does not include any of the other required information as stated above. Further, the AAO notes that the employment dates provided in the letter are inconsistent with the dates listed in the applicant's Form I-687. In the Form I-687, the applicant stated that he worked at [REDACTED] Restaurant from 1981 to 1984 and at the [REDACTED] from 1984 to 1988. Therefore, the letter can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record also contains a pay stub from [REDACTED] for the applicant for November 16 to December 15, 1981. The applicant did not include this employer in his Form I-687. As noted by the director, the applicant's evidence of employment is inconsistent with the information that he provided in the Form I-687.

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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains photocopies of a lease for 1241 W. 98th Street, Los Angeles, California signed by the applicant on August 1, 1986 and a rent receipt dated June 5, 1988. The AAO notes that on the Form I-687, the applicant claims to have lived at the same address since 1981. No lease or rent receipt for the property has been tendered prior to 1986.

The record of proceeding also contains a photocopy of a receipt from [REDACTED] dated November 2, 1987 listing the applicant's name and address. This is some evidence that the applicant was in the United States on that date.

The record contains photocopies of payments made to [REDACTED] beginning on October 10, 1983. The book contains many date stamps for 1983, 1984, and 1985. In his decision, the director states that some of the dates appear to have been altered. On appeal, the applicant did not provide the original document or other evidence establishing that the photocopies are an accurate representation of the original. In his statement on appeal, the applicant stated that other officers have looked at the documents before and "it was never brought to [his] attention." Given the failure of the applicant to address these concerns this document is of minimal probative value.

The record also contains copies of the first page of tax returns for the years 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988 filed on November 21, 2006. The record contains no Internal Revenue Service (IRS) Form W-2 for these years or any contemporaneous documentation of the applicant's residence in the United States for the years 1981 to 1988. In the tax returns submitted, the applicant listed "0" for wages and listed his income as a capital gain in 1981, alimony in 1987, and business

income in 1982, 1983, 1984, 1985, 1986, and 1988. The applicant did not submit a copy of the Schedule D required for reporting capital gains and losses or Schedule C required for reporting business income. The information in the applicant's tax returns is inconsistent with the employment information in the Form I-687. In the Form I-687, the applicant listed [REDACTED] Restaurants as his employers from 1981 to 1984 and [REDACTED] as his employer from 1984 to 1988. He did not indicate any self-employment during the requisite period on the Form I-687. Therefore, the November 21, 2006 filings are not evidence that the applicant was employed in the United States during the requisite period.

In his decision, the director also noted that the applicant did not list all of his absences in the Form I-687. The director noted that the applicant was present at the birth of the applicant's son [REDACTED] and at the registration of the birth certificate on May 4, 1984. The director also lists the births of the applicant's sons [REDACTED] on June 8, 1986, the birth of [REDACTED] on September 25, 1989, and the director states that the applicant was present at the registration of [REDACTED] birth certificate on October 24, 1989. In his Form I-687, the applicant listed an absence in 1988 and an absence from July 30, 1994 to August 7, 1994. The information in the Form I-687 is inconsistent with the evidence in the record of proceeding. On appeal, the applicant states that he cannot remember every time that he left the United States. The AAO is unable to determine the number of absences or days that the applicant was outside of the United States during the requisite period. It is not clear as to whether any absence exceeded 45 days or if the aggregate of all the absences exceeded 180 days. *See* 8 C.F.R. § 245a.2(h).

There are many inconsistencies in the record of proceeding. In his decision, the director noted that some of the evidence including the employer letter from [REDACTED] and the [REDACTED] payments appear to have been altered. On appeal, the applicant provides no additional evidence in response to the director's concerns. In any further proceeding, it must be determined whether the applicant is also inadmissible due to fraud or willfully misrepresenting a material fact, seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *See* § 212(a)(6)(C)(i) of the Act.

Beyond the decision of the director, the AAO notes that there is evidence in the record of proceeding that the applicant first entered the United States in 1983.

Based on the evidence, the AAO finds that it is more likely than not that the applicant resided in the United States during some portion of the requisite period, from August 1, 1986 to the end of the requisite period. However, the evidence does not establish the applicant's continuous residence throughout the requisite period.

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.