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U.S. Citizenship
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FILE: MSC 04 349 11592

Office: Chicago

Date: DEC 21 2006

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. 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.

Robert P. Wiemann, 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel contends that CIS failed to issue a notice of intent to deny to the applicant prior to the denial of his application and then failed to forward his denied application for review by the Special Master as required by the CSS/Newman Settlement Agreements. Counsel reiterates the applicant's claim of residence in this country for the requisite periods Counsel asserts that the affidavits submitted in support of the applicant's claim of residence in the United States for the period in question are sufficient to establish such claim.

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 13, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed “[redacted] Upland CA 91786,” from February 1981 to March 1983, and “[redacted] Chicago IL 60659,” from April 1983 through at least the date of the termination of the original legalization application period on May 4, 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit signed by [redacted]. [redacted] stated that the applicant worked as a helper at “A Dallas Submarine” in Chicago, Illinois from April 1983 until August 1987. Although the affiant’s testimony indicated that the applicant resided in this country from April 1983 to August 1987, [redacted] failed to provide any specific, detailed, and verifiable testimony, such as the applicant’s address(es) of residence in this country, to corroborate the

applicant's claim of residence in the United States for that period. Further, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in the period prior to January 1, 1982 to March 1983, as well as that period from September 1987 to the date of the termination of the original legalization application period on May 4, 1988.

The applicant also included an affidavit signed by [REDACTED] who declared that the applicant worked as a helper at "Sunny Submarine" since August 1987. While [REDACTED] attested to the applicant's residence in this country since August 1987, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period. Moreover, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in that period from prior to January 1, 1982 to July 1987.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] noted that the applicant had lived with him and his family at [REDACTED] in Chicago, Illinois, since 1983. However, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States in that period from prior to January 1, 1982 to 1983. In addition, it must be noted that while the applicant listed the same street address as his address of residence in this country beginning in April 1983 at part #30 of the Form I-687 application, he failed to include the apartment number listed by [REDACTED] as the address where he and the applicant resided together. No explanation has been provided as to why the applicant failed to include this apartment number in listing his address of residence from April 1983 through at least the date of the termination of the original legalization application period on May 4, 1988.

The applicant submitted an affidavit signed by [REDACTED] who stated that the applicant both lived with and took meals with him at [REDACTED] in Upland, California from February 1981 to March 1983. Although [REDACTED] attested to the applicant's residence in this country from February 1981 to March 1983, he failed to provide any testimony relating to the applicant's residence in the United States in that period prior after March 1983.

On appeal, counsel contends that CIS failed to issue a notice of intent to deny to the applicant prior to the denial of his application and then failed to forward his denied Form I-687 application for review by the Special Master as required by the CSS/Newman Settlement Agreements. However, a review of the CSS/Newman Settlement Agreements demonstrates that CIS is only required to issue a notice of intent to deny to an applicant in those cases where an application is to be denied for class membership. *See* Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. In the present case, the record shows that the applicant's Form I-687 application was denied because he failed to maintain continuous physical presence in the United States after November 6, 1986 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988 as required by both section 245A(a)(3) of the Act and 8 C.F.R. § 245a.16(b). As the applicant's Form I-687 application was denied on the basis of his failure to maintain continuous physical presence in this country for the requisite period rather

than his failure to establish a claim to class membership, such decision is not subject to the review of the Special Master. *See* Paragraph 9, page 5 of the CSS Settlement Agreement and paragraph 9, pages 7-9 of the Newman Settlement Agreement. Therefore, counsel's contention that CIS failed to follow the proper procedures in denying the applicant's Form I-687 application as specified in the CSS/Newman Settlement Agreements cannot be considered as persuasive.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the four affidavits submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 lack sufficient detail, contain little verifiable information, and most importantly, all lack testimony regarding the applicant's continuous residence in the United States for the entire period from prior to January 1, 1982 through the date that he attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988.

The absence of sufficiently detailed supporting documentation that provides testimony 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's reliance upon documents with minimal probative value, 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 as required under section 245A(a)(2) of the Act. 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