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AUG 07 2007



FILE: 
MSC-04-260-10552

Office: LOS ANGELES

Date:

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: 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.

Robert P. Wieman, 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 of May 5, 1987 to May 4, 1988. Therefore, the director determined 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, the applicant asserts that he has resided in the United States during the requisite period. The applicant submitted additional documentation as corroborating evidence of his residence in the United States during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. 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).

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.

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 date he attempted to file a Form I-687 application with the Service in the original legalization application period of 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 for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, with CIS on June 16, 2004. The applicant signed these documents under penalty of perjury certifying that the information contained in the application is true and correct. Part 30 of the application requests the applicant to provide all of his residences in the United States since his first entry. The applicant responded that he resided at [REDACTED], Los Angeles, California, from 1979 until January 1985; and [REDACTED], Los Angeles, California, from February 1985 until 1988. Part 32 of the application requests the applicant to list his absences from the United States since his entry. The applicant responded that he was in Mexico in November 1987 and March 1986. The applicant indicated on his application that he reentered the United States on both occasions within a month. Part 33 of the application requests the applicant to list his employment history in the United States since his entry. The applicant responded that he was employed with Big I Fashion of California, Los Angeles, California, from 1979 until November 1992; Murata Farms Inc, Downey, California, from October 1983 until

1985; and [REDACTED] Oregon, from May 1985 until May 1986. It should be noted that although the applicant indicated he worked in Oregon from May 1985 until May 1986, he failed to provide an Oregon address in Part 30 of this application. The information provided on the applicant's Form I-687 indicates that he has continuously resided in the United States during the requisite period. However, this assertion is not supported by documentation contained in the applicant's record.

The applicant's record contains various documents to corroborate his residence in the United States. The issue in this proceeding is whether the applicant resided 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 of May 5, 1987 to May 4, 1988. Therefore, this proceeding will focus solely on documents that attempt to provide evidence of the applicant's continuous residence in the United States during this time period.

On appeal, the applicant submitted original photographs of himself as evidence of his residence in the United States prior to January 1, 1982. Five of these photographs contain date stamps to indicate the date they were developed. The applicant submitted the following dated photographs of himself: standing in front of the LA airport express bus, dated October 1978; standing in front of Harbor Freeway, dated October 1978; standing in front of a freeway entrance, dated October 1978; standing outside a large building, which the applicant indicates in his written statement is a convention center, dated October 1978; standing outside of a house, dated January 1979. The photographs of the applicant standing outside the LA airport express bus and the Harbor Freeway are probative and credible evidence of his residence in the United States prior to January 1, 1982.

The applicant's record contains other credible documentation of his residence in the United States prior to January 1, 1982. On appeal, the applicant submitted an original postcard that he sent from the United States to Mexico, with a postmark of November 1978. The applicant's record also contains an original receipt from the California Department of Motor Vehicles (DMV), dated March 17, 1988. This receipt provides that the applicant's address as of October 9, 1979 was [REDACTED], Los Angeles. These documents serve as probative evidence of the applicant's residence in the United States prior to January 1, 1982.

The applicant's record also contains credible documentation of his residence in the United States during the year 1987. The applicant submitted with his application copies of the following documents: a California DMV information request print-out indicating his address as of September 24, 1987; his 1987 tax return; his 1987 wage and tax statement; a copy of his California driver's license issued September 24, 1987; his paycheck stubs respectively dated October 2, 1987 and December 4, 1987; and a receipt indicating that his driver's license was issued on September 24, 1987. These documents serve as probative evidence of the applicant's residence in the United States during the year 1987.

On appeal, the applicant submitted numerous statements from his friends and family members, which provide that he has resided in the United States during the requisite period. The applicant

has submitted the following notarized documents: [REDACTED], stating that he has known the applicant from August 1982 until present; [REDACTED], stating that he has known the applicant from February 1982 until present; [REDACTED], stating that she has known the applicant from January 1980 until present; [REDACTED], stating that he has known the applicant from June 1981 until present; [REDACTED], stating that he has known the applicant from September 16, 1980 until present; [REDACTED], stating that she has known the applicant from March 10, 1979 until present; and [REDACTED], stating that he has known the applicant from January 1980 until present. The applicant also submitted a letter from [REDACTED], Pastor, Iglesia Siolo Church, which provides, “[t]his is to verify that [REDACTED] has been a member of this church since 1982.” Although these documents provide some information regarding the applicant’s presence in the United States, they fail to provide detailed testimony as to the extent of the authors’ contact with the applicant during the requisite period. Therefore, these documents can only be afforded minimal weight as corroborating evidence.

The applicant submitted with his Form I-687 application copies of the following documents notarized in July 1995: a letter from [REDACTED], stating that she has knowledge of the applicant’s residence in the United States from 1979 until present; a letter from [REDACTED], stating that he has knowledge of the applicant’s residence in the United States from 1983 until 1984; a letter from an unknown author, stating that s/he has knowledge of the applicant’s residence in the United States from 1981; and a letter from [REDACTED], stating that he has known the applicant since 1980. The applicant also submitted a statement from [REDACTED], [REDACTED] notarized November 30, 1994, stating that he has knowledge of the applicant’s residence in the United States from November 1981 until present. These statements lack significant detail because they fail to provide detailed information on the authors’ contact with the applicant during the requisite period. They also fail to provide the authors’ phone numbers to verify the contents of their statements. It should be noted that the statement from [REDACTED] which provides that she has knowledge of the applicant’s residence in the United States since 1979, is inconsistent with a subsequent statement issued by [REDACTED]. The subsequent statement from [REDACTED], dated July 8, 2006, provides that she has known the applicant since January 1980. Therefore, these documents also can only be afforded minimal weight as corroborating evidence.

Moreover, documentation in the applicant’s record is inconsistent with his purported dates of absence from the United States. Part 32 of the Form I-687 application requests the applicant to list his absences from the United States since his entry. The applicant responded that he was in Mexico in November 1987 and March 1986. The applicant indicated on his application that he reentered the United States on both occasions within a month. This information is inconsistent with documentation contained in the applicant’s record. The applicant’s record contains a Form G-325A, Biographic Information Sheet, signed by him on August 25, 2001. This form provides that the applicant married his wife, [REDACTED] on July 15, 1986 in Queretaro. The translation of the applicant’s marriage certificate provides that this marriage was in Queretaro, Mexico. The applicant’s marriage in July 1986 is inconsistent with his purported brief visits to

Mexico in November 1987 and March 1986. This information draws into question whether the applicant has continuously resided in the United States during the entire requisite period.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 254a.2(d)(6). The applicant has provided probative and credible documentation of his presence in the United States prior to January 1, 1982 as well as during the year 1987. However, the applicant failed to provide credible and probative documentation of his continuous residence in the United States during the period between these two dates. As noted above, the notarized statements provided by the applicant to corroborate his residence during this time period lack significant detail and therefore are not probative and credible evidence. Therefore, the applicant has failed to provide sufficient evidence of his continuous residence in the United States during the entire requisite period.

An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p). "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

During the applicant's legalization interview, he testified that he was arrested for driving under the influence (DUI) prior to 1990. The applicant has been unable to provide a certified court disposition related to this arrest. In lieu of a final disposition, the applicant has provided two certified letters from the Los Angeles Superior Court. The first letter, dated July 25, 2005, states that there is no felony record under the applicant's name and date of birth. The second letter, dated September 16, 2005, states that there is no record in the office under the applicant's name, date of birth and driver's license number. The final disposition of the applicant's arrest for DUI is unknown. It is the position of CIS that a fingerprint search provides a more thorough account of an applicant's criminal background than local record searches conducted by name. The applicant could obtain a summary of his arrests by submitting a request to the Los Angeles Police Department (LAPD). The LAPD arrest summary is issued pursuant to the submission of the applicant's fingerprints.¹ However, as this appeal will be dismissed on other grounds, this issue need not be examined further.

¹ <http://www.lapdonline.org>

In conclusion, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Given the applicant's contradictory statements on his applications and his 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 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.