



U.S. Citizenship
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Services

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AUG 10 2007

FILE: [REDACTED]
MSC-05-279-10394

Office: NEW YORK

Date:

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.


Robert P. Wiemahn, 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, New York, 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 submits two amended notarized statements in an attempt to account for the contradictions in his previously furnished evidence.

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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on July 6, 2005. Part 30 of this application requests the applicant to list all of his residences in the United States since his entry. The applicant responded that he resided at [REDACTED] from May 1978 until December 1981. The applicant failed to provide a city and state for this address. The applicant also responded that he resided at [REDACTED] Jamaica, New York from December 1981 until December 1988. Part 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was self-employed in New York in the occupation of construction work from December 1981 until December 1988. This information indicates that the applicant continuously resided in the United States during the requisite period, however the applicant has failed to corroborate this claim with credible and probative evidence.

On November 15, 2005, the applicant received a Notice of Intent to Deny (NOID) from the director, National Benefits Center. The NOID states that the applicant failed to provide evidence to establish his eligibility for Temporary Resident Status. The applicant was offered thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant provided two notarized statements entitled "Affidavit" from [REDACTED] and [REDACTED]. During the applicant's Form I-687 interview, he submitted a third notarized statement, also entitled "Affidavit," from [REDACTED]. The statement from [REDACTED] provides, "I personally know that [REDACTED] had been living in the United States during the years 1981 to 1988 . . . That I personally know the above said information because he was my family friend and kept in touch with me during the years of to [sic] 1981 to 1988." The statement from [REDACTED] provides, "I personally know that [REDACTED] had been living in the United States during the years 1986 to 1988. That I personally know the above said information because he was my family friend and kept in touch with me during the years of 1986 to 1988." The statement from [REDACTED] provides, "I personally know that [REDACTED] had been living in the United States during the years 1982 to 1988. That I personally know the above said information because he was my family friend and kept in touch with me during the years of 1982 to 1988." These statements are not probative and credible evidence of the applicant's residence in the United States during the requisite period. They lack considerable detail on the authors' first acquaintance with the applicant and the extent of the authors' contact with the applicant during the requisite period.

On March 28, 2006, the applicant received a Notice of Intent to Deny (NOID) from the director of the New York District Office. The director notified the applicant that he failed to submit documents that would constitute a preponderance of evidence as to his residence in the United States. The applicant was granted thirty (30) days to submit additional evidence in response to the NOID. The applicant responded to the NOID with his own statement asserting that he is eligible to adjust to temporary resident status. The applicant asserts in his statement that, "[t]he affiants who gave the affidavits on my behalf [sic] they have the information that I am in the United States since 1981." The applicant failed to provide any additional evidence in support of his application. On June 16, 2006, the applicant received a denial notice from the director. This notice provides that the three notarized statements submitted by the applicant were found to be

not credible. On appeal, the applicant submitted amended notarized statements from [REDACTED] and [REDACTED]. However, these amended statements continue to lack considerable detail on the authors' first acquaintance with the applicant and the extent of the authors' contact with the applicant during the requisite period. Therefore, these affidavits can only be afforded minimal value as corroborating evidence of the applicant's residence in the United States during the requisite period. The applicant's failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

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. 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 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 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.