



U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC 06 097 10769

Office: LOS ANGELES

Date: DEC 17 2007

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:

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, Los Angeles. 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, on January 5, 2006. The district director determined 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. The district director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements

On appeal, counsel asserts that the district director incorrectly denied the application. Counsel addresses discrepancies in the applicant's testimony noted in the denial decision and submits additional affidavits.

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)(1).

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)(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. 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).

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 for the duration of the requisite period. 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 Citizenship and Immigration Services (CIS) on January 5, 2006. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED], California” from February 1980 to November 1989 and at “[REDACTED] California” from September 2003 to the filing date of the application. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that he was in India visiting family from November 1988 to July 1997. The CIS officer who conducted his interview noted on the application that the applicant stated during his interview that he was in India from November 1988 to January 1989. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant failed to list any employment in the United States. The CIS officer who conducted his interview noted on the application that the applicant worked for Arco AM PM, a gas station in Altadena, California, as a cashier, but no dates of employment were noted.

At his interview with a CIS officer on February 8, 2007, the applicant stated that he first entered the United States without inspection from Mexico in February 1980. He further stated that he did part-time gardening work with Mexican workers when he first entered the United States.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated February 27, 2006, from [REDACTED] a resident of Pasadena, California. Ms. [REDACTED] stated she had known the applicant since 1981 and that he lived at "[REDACTED] Altadena, California" from 1981 to 1988, at which time he returned to India for a visit. She indicated that the applicant returned to the United States from India in September 2003. Ms. [REDACTED] explained:

I have been closely associated with Mr. [REDACTED] for 25 years since 1981. He has been a trusted friend of mine and has helped me on numerous occasions. He is also involved helping in community welfare of the people."

The applicant also submitted an affidavit dated February 27, 2006, from [REDACTED] a resident of Pasadena, California. Mr. [REDACTED] stated that he had known the applicant since 1981 and that the applicant resided at [REDACTED] California" from 1981 to 1988. Mr. [REDACTED] further stated that the applicant returned to India for a visit in 1988. He indicated that the applicant returned from India in September 2003. Mr. [REDACTED] explained:

I am aware of all the above information because I have been closely associated with Mr. [REDACTED] for 25 years since 1981. He has been a trusted friend of mine and has helped me on numerous occasions. He is also involved helping in community welfare of the people.

The applicant included an affidavit from [REDACTED], a resident of Pasadena, California. Ms. [REDACTED] stated that the applicant resided at "[REDACTED] Altadena, California" from 1981 to 1988. She explained that she used to see the applicant at the gas station where he worked part-time "and he used to help us in charity work. Often from the year 1981. And he used to help the needy." However, Ms. [REDACTED] provided no information as to how she met the applicant or the frequency of her contact with the applicant during the requisite period.

On appeal, counsel reiterates the applicant's claim that the applicant first entered the United States without inspection from Mexico in February 1980.

However, the record contains a sworn statement from the applicant dated October 30, 2006, that contradicts this statement. When the applicant returned to the United States from India on October 30, 2006, under a grant of advance parole, Customs and Border Protection (CBP) officers took a sworn statement from the applicant at Los Angeles International Airport, Los Angeles, California. When the CBP officers asked the applicant when he first entered the United States, the applicant stated that he first entered the United States in August 2002 and stayed in this country for five and one half months. When the applicant was asked about his second trip to the United States, the applicant stated that he entered the United States on August 30, 2003, and stayed in this country for three years. When the CBP officers informed the applicant that he was not eligible for temporary resident status unless he could establish that he entered the United States prior to January 1, 1982, and resided continuously in this country from that date to May 4,

1988, the expiration date of the original application period for temporary resident status under section 245A of the Act, the applicant stated, "I came in 1981 without a passport thru the Canadian border." He attested that he remained in the United States until 1994.

The applicant's sworn statement on October 30, 2006, that he first entered the United States in 1981 without inspection from Canada contradicts his statement during his CIS interview on February 8, 2007, that he first entered the United States in 1981 from Mexico. The applicant's statement during his sworn statement on October 30, 2006, that he remained in this country from 1981 to 1994 contradicts his statement on the Form I-687 and during his CIS interview that he lived in the United States from his initial entry in 1981 until November 1988, at which time he returned to India to visit his parents.

Furthermore, when the CBP officers initially asked the applicant under oath when he first entered the United States, he stated that first entered the United States in August 2002. The applicant did not revise his testimony to state that he first entered the United States from Canada in 1981 until after the CBP officers specifically informed him that he could not establish eligibility for temporary resident status unless he could establish continuous residence in the United States from prior to January 1, 1981 to May 4, 1988 and continuous physical presence in the United States from November 6, 1986 to May 4, 1988. The applicant's revised claim during his sworn testimony on October 30, 2006, raises serious questions of credibility regarding his claim. The applicant has not provided any explanation for these discrepancies in his claimed manner of entry and dates of residence in the United States.

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. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Counsel submits, on appeal, second affidavits from [REDACTED] and [REDACTED], both dated March 29, 2007. Ms. [REDACTED] and Mr. [REDACTED] testimony in these affidavits is identical to their testimony in their previous affidavits except for the revised statement that the applicant returned to the United States from India in January 1989 instead of September 2003. Neither affiant has provided any explanation for this change in their testimony regarding the applicant's absences outside the United States.

Counsel included an affidavit dated September 16, 2006, from [REDACTED] a resident of Altadena, California. Mr. [REDACTED] stated, "I personally know and have been acquainted in the United States with Mr. [REDACTED] . . . who is the applicant above mentioned." Mr. [REDACTED] stated that the applicant resided at "[REDACTED] Altadena, California" from February 1981 to November 1988 and at "[REDACTED] Altadena, California" from September 2003 to the date of the attestation. Mr. [REDACTED] explained, "I am able to determine my acquaintance with the applicant that he has been in the United States because I used to see him often at this work place where he used to work part-time at a gas station." This affidavit is

virtually identical to the affidavit signed by [REDACTED] except for the information relating to the name and address of the affiant. Both individuals attest that their knowledge of the applicant's residence in the United States is based on the fact that they used to see him at a gas station where he worked part-time.

However, the applicant did not list any employment at a gas station during the requisite period on the Form I-687. This statement by Mr. [REDACTED] and Ms. [REDACTED] contradicts the applicant's statement during his interview that he began working at a gas station in 2002 and his sworn statement at Los Angeles International Airport on October 30, 2006, that he had worked at the gas station for three years, since sometime in 2003. He indicated that he did odd jobs and gardening work during the requisite period. Neither Ms. [REDACTED] nor Mr. [REDACTED] has provided any explanation for this discrepancy in the applicant's claimed place and date of employment during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only four people concerning that period, all of which lack credibility for the reasons stated above.

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 contradictory statements on his application and during his interview 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.

It is noted that the district director stated in the denial decision that the applicant's absences outside the United States between 1988 and 2003 exceeded the 45 days allowed for a single absence outside the United States during the requisite period. However, the applicant is not required under the statute or the regulation to establish continuous residence in the United States after May 4, 1988.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.