



U.S. Citizenship
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FILE: [REDACTED]
MSC 06 026 31045

Office: SAN DIEGO Date: DEC 26 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: 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.

A handwritten signature in blue ink, appearing to read "R. Wiemann".

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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period and had failed to appear for an adjustment interview. The director denied the application, finding that the applicant had not met her 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, the applicant asserts that he requested that his interview scheduled on January 30, 2007, be re-scheduled.

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 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).

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 first issue in this proceeding is whether the applicant failed to appear for an interview on January 30, 2007, as scheduled.

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1). The interview may be waived only for a child under the age of 14, or when it would be impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

On October 21, 2006, the applicant was issued an interview appointment notice instructing him to appear at the CIS office in Chula Vista, California, for his legalization interview on December 5, 2006. The applicant was instructed in the interview appointment notice to bring with him to his interview appointment the following: three recent federal income tax returns and his W-2 wage and tax statements for those years; copies of his last three pay stubs; Form I-693 medical examination report; and, additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The applicant appeared for his December 5, 2006, appointment, but he failed to bring with him to the interview any of the documentation specified in the interview appointment notice. During his interview the applicant, who is a citizen of Mexico, told the interviewing officer that he had a United States B-1/B-2 border crossing card that he had left at home.

The CIS officer who conducted the applicant's initial interview issued a second interview appointment notice instructing the applicant to appear again at the Chula Vista CIS office for a second interview on January 30, 2007, bringing with him with the following documents: copy and original valid state issued identification document such as driver's license, passport, or employment card; copies of three recent federal income tax returns with Forms W-2; Form I-693 medical examination report; and, additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The applicant failed to appear for his second interview as scheduled, and there is no evidence in the record of proceeding that he requested that his interview be re-scheduled.

On appeal, the applicant states that he sent a letter requesting that his interview be re-scheduled because he was unable to appear for his January 30, 2007, interview.

As previously stated, the applicant failed to appear for his January 30, 2007 interview as scheduled, and there is no indication in the record that the applicant sent correspondence to CIS requesting that his interview be re-scheduled as required. C.F.R. § 245a.2(e)(1). Therefore, the application must be denied for this reason.

The second 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 October 26, 2005. 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 October 1980 to July 1985 and at [REDACTED]' from July 1985 to January 1991.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated December 13, 2005, from [REDACTED], a resident of San Bernardino, California. Ms. [REDACTED] attested that the applicant had resided continuously in the United States from prior to 1982 through 1991. She stated that she first met him in 1980 because he was her mother's handyman. She further stated that her contact with him was "continuous after that, because he started cutting my lawn and would help me with minor labor in my house."

The applicant also submitted an affidavit dated December 13, 2005, from [REDACTED], a resident of San Bernardino, California. Mr. [REDACTED] attested that the applicant had resided continuously in the United States from prior to 1982 until 1991. Mr. [REDACTED] stated that he first met the applicant in 1980 because the applicant was working as a handyman for his friend. Mr. [REDACTED] further stated, "[m]y contact with him was continuous after that because he started cutting my lawn."

The applicant included an affidavit dated December 13, 2005, from [REDACTED] a resident of Rialto, California. Ms. [REDACTED] attested that the applicant resided continuously in the United States from prior to 1982 until 1991. Ms. [REDACTED] stated that she first met the applicant in 1980 when he was working for her friend as a handyman. She further stated that her contact with the applicant was continuous after that, "because he started cutting my lawn and would help me with minor labor in my house."

The applicant provided an affidavit dated December 13, 2005, from [REDACTED], a resident of San Bernardino, California. Ms. [REDACTED] attested that the applicant continuously resided in the United States from prior to 1982 to 1991. Ms. [REDACTED] stated that she first met the applicant in 1981 "thru my mom he was her handyman." Ms. [REDACTED] explained that her contact with him after that was continuous "because he started cutting my lawn and would help me with minor labor in my house."

Finally, the applicant submitted an affidavit dated December 13, 2005, from [REDACTED] a resident of San Bernardino, California. Ms. [REDACTED] attested that the applicant had resided continuously in the United States from prior to 1982 to 1991. She stated that she first met the applicant in 1980 when he was working as her neighbor's handyman. She further stated that her contact with him after that was continuous "because he started cutting my lawn and would help me with minor labor in my house."

None of the affiants provided a phone number where he or she could be contacted to verify the information contained in the affidavits. Nor did any of the affiants give any indication where the applicant resided during the requisite period.

On appeal the applicant did not make a statement or provide any additional evidence to corroborate his claim of continuous residence in the United States 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 five people concerning that period, all of which contain almost identical language and lack detail that would lend credibility and probative value to the attestations.

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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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