



U.S. Citizenship
and Immigration
Services

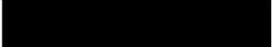
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LI

FILE:



Office: LOS ANGELES

Date: JUL 25 2007

MSC 05 273 12098

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

The district 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 district 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, counsel asserts that the notary who helped the applicant prepare his Form I-687 entered the wrong information on the application regarding the applicant's dates of residence and absence during the requisite period. Counsel submits two 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 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. 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 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 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 30, 2005. At part #16 of the Form I-687, where applicants are instructed to list their last entry into the United States, the applicant indicated that he last entered the United States in March 1990. 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] Concord, California” from March 1990 to March 1994. The applicant did not list any residences in the United States prior to March 1990. At part #32 of the Form I-687, where applicants are instructed to list all absences outside the United States since first entry, the applicant indicated that he was living in Mexico from June 1970 to March 1990. At part #33 of the Form I-687, where applicants are instructed to list all employment since arrival in the United States, the applicant indicated that he worked for Denny’s Restaurant in Concord, California, from May 1990 to March 1991. He did not list any employment in the United States prior to May 1990.

At his interview with a CIS officer on April 28, 2006, the applicant stated that he first entered the United States in June 1981. According to the notes of the interviewing officer, the applicant stated that he was outside the United States for 10 days in March 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated April 25, 2006, from [REDACTED] [REDACTED] stated that she had known the applicant and his parents, [REDACTED] and [REDACTED] since 1985 because she and the applicant's family used to reside at the same address, "[REDACTED] Salinas, California." The applicant did not list this address on the Form I-687. As previously stated, the applicant did not list any addresses in the United States prior to 1990 on the Form I-687 application. [REDACTED] further stated that she and the applicant worked for River Ranch in Salinas, California, for two weeks "around the year 1987." [REDACTED] did not provide the inclusive dates of the applicant's residence at [REDACTED] Salinas, California." Additionally, [REDACTED] cannot attest to the applicant's residence in the United States prior to 1985.

The applicant also submitted an affidavit dated April 27, 2006, from [REDACTED] [REDACTED] stated that he met the applicant for the first time in 1981 when he was working in the fields of Salinas, California, with the applicant's father, [REDACTED]. [REDACTED] does not provide any verifiable information such as the applicant's residences during the period in question.

The district director denied the application on April 28, 2006, because the applicant failed to establish continuous residence in the United States during the requisite period. The district director noted in the denial decision that the applicant did not list any residence or employment in the United States prior to 1990. The district director further noted that the applicant indicated on the Form I-687 that he was living in Mexico from June of 1970 to March 1990.

On appeal, counsel asserts that [REDACTED] the notary who prepared the applicant's Form I-687 for him, entered incorrect information on the application regarding the applicant's dates of residence and absence. Counsel contends that a typographical error on the Form I-687 application should not prevent the applicant from being granted temporary resident status. Counsel asserts that the applicant's testimony during his legalization interview and the affidavits he submitted in support of the application are sufficient to establish his eligibility for temporary resident status by a preponderance of the evidence.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

Counsel submits a statement from the applicant in which he reiterates his claim of initial entry into the United States in early June 1981. The applicant states that he and his parents lived at "The Camp" in Salinas, California, and worked in the fields. He further states that his parents never let him attend school in this country because he was in unlawful status. The applicant explains that he was sent to live in the home of [REDACTED] and her sister, [REDACTED], in 1985 while his parents continued to work in the fields. The applicant states:

I turned fifteen years old in June 1985, and I got a job cleaning fish. . . . I looked for a second job, but I did not have any papers to show lawful residency. Therefore, I performed several other odd jobs, such as construction and other types of labor. As I was only a young child in 1981, it is difficult to show my presence.

My record of employment only shows work since 1990. This is because I was without papers to work. In addition, I was only 20 years old in 1990. As a young man it was easier to find work than when I was only a child.

I hired a notary named [REDACTED] to help me fill out the necessary papers to apply for Temporary Resident. I do not read or write English well enough to fill out complicated forms. I did not read the papers that [REDACTED] submitted very well. I noted that I left the U.S. for 10 days in 1990. My attorney told me that it appears [REDACTED] correctly wrote in my last date of entry on page 2 of the application, but then improperly transmitted that information onto page 4 indicating that I lived in Mexico in 1990.

As noted by the district director, the applicant did not list any residence or employment in the United States prior to 1990 on the Form I-687 application. In fact, the applicant specially indicated at part #32 of the Form I-687 that he lived in Mexico from his birth in 1970 to 1990. It is noted that [REDACTED]'s name is not listed as the preparer of the application at part #44 of the Form I-687.

It is further noted that [REDACTED] did not sign the Form I-687 application declaring that she was the preparer of the application. The applicant signed the application on May 30, 2005, certifying under penalty of perjury that the information provided on the application was true and correct. It is the applicant's responsibility to ensure that all information entered on the Form I-687 by the preparer of his application is true and correct. Therefore, the applicant's explanation for the discrepancies between his statements on the Form I-687 and during his interview is not sufficient to overcome these discrepancies.

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 also submits an affidavit dated April 13, 2006, from [REDACTED]. [REDACTED] states that she has known the applicant since April of 1985 when he rented a room in her house in Salinas, California, but she does not provide the inclusive dates of the applicant's residence in her home.

Counsel also submits a letter dated June 13, 2006, from [REDACTED]. [REDACTED] states that he first met the applicant in 1981 when the applicant and his parents arrived in Salinas and began working

in the fields with his grandmother. [REDACTED] further states that at the age of 15 or 16, he and the applicant worked together in greenhouses in Monterey County and were paid cash under the table. However, [REDACTED] does not provide any specific verifiable information such as the applicant's addresses 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 only four people concerning that period, all of which lack sufficient verifiable information to corroborate the applicant's claim. Furthermore, the applicant has made contradicting claims regarding his dates of initial entry, absence, and residence in the United States.

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 legalization 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.

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