



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-176-11190

Office: CLEVELAND

Date: JUN 14 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.

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, Cleveland, 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 he has lived in the United States since 1981. The applicant maintains that his previously furnished evidence is credible.

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 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 March 25, 2005. Part 30 of this application requests the applicant to provide all of his residences in the United States since his first entry. The applicant responded that his first address in the United States was [REDACTED], New York, New York. The applicant indicated that he resided at this address from 1981 until 1986. Part 33 of the application requests the applicant to provide his employment in the United States since his entry. The applicant responded that he has been self employed as a vendor in New York and Cincinnati. The applicant indicated that he has been employed in this profession from 1986 until present. The applicant failed to provide any employment information prior to 1986.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of an attestation by a church or other organization, which identifies the applicant by name, is signed by

an official, shows inclusive dates of membership, states the address where applicant resided during the membership period, includes the seal or letterhead of the organization, establishes how the author knows the applicant, and establishes the origin of the information being attested to. The applicant submitted a letter from [REDACTED] located in New York, New York. This letter provides, “[t]he bearer of this letter [REDACTED] attends [REDACTED] that is embodied in the Islamic community for our religious service on Fridays at 1:00 p.m. He has been attending prayer here since 1981.” The letter from [REDACTED] fails to satisfy the delineated criteria in several respects. This letter fails to explain where the applicant resided during the membership period. Additionally, the letter indicates that it has been signed by the “Secretary’s office,” however it fails to provide the author’s name. Moreover, this letter, issued November 24, 2005, fails to provide the dates of the applicant’s membership. The applicant’s Form I-687 application states that he has resided in Cincinnati, Ohio since April 2002. However, the [REDACTED] letter, dated November 24, 2005, indicates that the applicant “has been attending prayer here since 1981.” It is unclear how the applicant could attend prayer at [REDACTED] located in New York, New York, when he has been residing in Cincinnati, Ohio since April 2002. Finally, the letter fails to establish the origin of the information being attested to. The lack of detail and inconsistency related to the [REDACTED] letter undermines its overall credibility, and therefore, it cannot be given any weight as corroborating evidence.

An applicant may also provide “any other relevant document” as proof of her residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted a notarized letter from [REDACTED] which provides, “I the undersigned [REDACTED] hereby certify that I have known [REDACTED] BA from 1981 to 1986; we used to live together at the same Hotel. In witness whereof, I issue this present to him with all the right [sic] and privileges appertaining thereto.” This letter contains several apparent deficiencies. The letter fails to specify the name of the hotel [REDACTED] resided at with the applicant. Additionally, the letter fails to provide any details on the extent of [REDACTED]’s contact with the applicant during their residence together. It should be noted that the applicant provided on his Form I-687 application that his address during this time period was [REDACTED] New York, New York. However, [REDACTED] letter indicates that the applicant resided at [REDACTED] New York, New York. Therefore, this document can only be afforded minimal weight as corroborating evidence due to its lack of detail.

The applicant submitted a notarized “Affidavit of Witness” from [REDACTED]. This “fill in the blank” statement provides that [REDACTED] has personal knowledge that the applicant resided at 862 [REDACTED] from 2003 until present time and [REDACTED] from 1981 until 1986. [REDACTED] provides in his statement that he met the applicant in December 1981 when the applicant was a street vendor. [REDACTED] further states that he is a good friend of the applicant and they are in touch. This statement also contains several apparent deficiencies. The statement fails to provide detailed information on [REDACTED] first meeting with the applicant and their subsequent friendship. Additionally, this statement fails to provide any information on the extent of [REDACTED] contact with the applicant since their purported first meeting in December 1981. Finally,

this statement provides, "I meat [sic] him in *Dec. 1981* when he was a street vendor" (emphasis added). However, the applicant's Form I-687 application provides that he has been a vendor since 1986. The lack of detail and inconsistency related to this document undermines its overall credibility, and therefore, it cannot be given any weight as corroborating evidence.

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 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 with the Service, 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.