



U.S. Citizenship
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LI

FILE: [REDACTED]
MSC-06-039-14468

Office: LOS ANGELES

Date: JUN 20 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, Los Angeles, 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 mentioned problems with his interview with a CIS officer and indicated he was not given the opportunity to answer the CIS officer's questions and provide additional documentation.

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 applicant 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 applicant 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 8, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his only address in the United States to be at [REDACTED] Avalon, California, from 1981 to the present time. At part #32 where applicants were asked to list absences from the United States, the applicant listed one trip to Mexico to visit family in 1987. At part #33 where applicants are asked to list employment in the United States, the applicant indicated he was self-employed working at various locations from 1981 to October 2004.

With his Form I-687 application, the applicant provided several affidavits and other supporting documents. The applicant provided an employment confirmation letter signed by [REDACTED] Controller of Gateway Pacific Contractors, Inc., in Sacramento, California, confirming the applicant's employment in the last quarter of 1984. This letter provided no detail regarding the applicant's job title or duties and [REDACTED] s personal knowledge of the applicant. The applicant also submitted an affidavit from [REDACTED] Manager, Carlota's Mexican Shop in Avalon, California, confirming that the applicant performed gardening and maintenance work for [REDACTED] from 1981 through August 6, 1990. [REDACTED] failed to provide supporting documentation of her identity, residence in the United States, or relationship to the applicant.

The applicant also provided photocopies of receipts and other documents to confirm his residence in the United States during the statutory period. He provided money order receipts from June 9, 1981 and February 20, 1982. The June 9, 1981 receipt lists the applicant's name as the sender, but provides no address. The February 20, 1982 receipt lists the applicant's name above the signature line, but the signature does not match the applicant's signature on Form I-687. In addition, the post office box listed below the signature does not match the post office box listed on Form I-687 that the applicant indicated he has used since he entered the United States. The applicant provided a copy of a folded pay stub dated November 27, 1984, which lists the applicant's name but lists only California for the applicant's address. The applicant provided pay stubs for work with Pancake Cottage, covering the pay periods September 12 to 18, 1985, February 15 to 19, 1986, and April 30 to May 6, 1987. These pay stubs list only the applicant's name and do not provide an address.

At his interview with a CIS officer on April 10, 2006, the applicant stated that he entered the United States without inspection in September 1981. The applicant testified that five of his children were born in Mexico, in 1976, 1980, 1984, 1987 and 1989. He stated that his wife first entered the United States in 1991 and brought the children with her at that time. The applicant provided no explanation of how three of his children could have been born in Mexico between 1984 and 1989, when the applicant and his wife were physically separated from each other from 1981 to 1991.

In denying the application the director noted the apparent inconsistencies between the applicant's oral testimony regarding his children's births and his wife's presence in the United States, versus his own presence in the United States. The director found that the applicant did not provide sufficient evidence to establish his continuous lawful residence in the United States since prior to January 1, 1982. As a result, the director denied the application.

It is noted that the applicant submitted his first Form I-687 application in 1990. At part #6 of the application where applicants were asked to provide a home address in the United States, the applicant listed [REDACTED] Avalon, California. At part #7 of the application where applicants were asked to provide a mailing address in the United States, the applicant listed [REDACTED], Jalisco, Mexico. At part #33 where applicants were asked to list all residences in the United States, the applicant listed [REDACTED] Avalon, California from January 1981 to January 1983, [REDACTED] Avalon, California, from March 1983 to November 1984, and [REDACTED] Avalon, California from December 1984 until the present time. None of these addresses was listed on the applicant's second Form I-687. No explanation was provided for the applicant's lack of address from January to March of 1983.

The record also includes five affidavits. [REDACTED] stated in his affidavit that the applicant shared a house with the affiant and his wife since February 1981. The affiant listed his address at the bottom of his affidavit as [REDACTED], Avalon, California. This address is found to be inconsistent with the information in the applicant's original I-687 application, which listed his address as [REDACTED]. [REDACTED] stated in a form affidavit that he has personal knowledge that the applicant resided in Avalon, California from January 5, 1981 to 1990. This affidavit states that the applicant "was working for [REDACTED] at the [REDACTED] in the year 1981." This

employment position is not referenced in any of the applicant's statements. [REDACTED] stated in his affidavit that he has known the applicant since 1981 in the United States. [REDACTED] also stated that during September and October of 1988 the applicant worked with [REDACTED] as an assistant in the "[REDACTED]" and since that time the applicant has been helping [REDACTED] on the weekends. This affidavit is found to be inconsistent with the affidavit provided by [REDACTED] which states that the applicant worked for [REDACTED] in 1981. The affidavit from [REDACTED] stated that the affiant has personal knowledge that the applicant resided at [REDACTED] from February 1981 to December 1981, at [REDACTED] from December 1981 to March 1983, at [REDACTED] from March 1983 to December 1984, and at [REDACTED] from December 1984 to the present. This affidavit is found to be inconsistent with the original form I-687 because of the street spelling of "[REDACTED]" instead of "[REDACTED]". In addition, on the original Form I-687, the applicant did not indicate ever having lived at house number 119. Lastly, the applicant did not list addresses on "[REDACTED]" or "[REDACTED]" on his most recent Form I-687. [REDACTED] stated in a form affidavit that he has personal knowledge the applicant has resided in the United States from January 19, 1981 to 1990. None of the five affiants provided any supporting documentation of their identity, residence in the United States during the statutory period, or relationship with the applicant. All of the affidavits lacked detail regarding the affiant's relationship with the applicant.

On appeal the applicant explained problems that occurred at his interview, including the officer referring to the applicant by a name that does not belong to the applicant. The applicant also expressed that he had been unable to answer the questions put forth by the officer and to provide additional documentation. However, the applicant had an opportunity to provide additional explanations and documentation on appeal, and chose not to do so. Specifically, the applicant provided no birth documentation for his children who were born in Mexico. The applicant also provided no explanation of the apparent inconsistency between the applicant's presence in the United States, his wife's absence from the United States, and his children's births in Mexico.

In summary, the applicant has provided extremely limited contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail or conflict with the applicant's testimony. Specifically, the only contemporaneous evidence the applicant provided of his residence in the United States prior to January 1, 1982 is a money order receipt from June 9, 1981 that does not list the applicant's address. None of the affidavits provided by the applicant are accompanied by supporting documentation of the affiant's identity, residence, or relationship to the applicant. Four of the affidavits also conflict with the applicant's testimony. The affidavits from [REDACTED] and [REDACTED] list the applicant's addresses such that they conflict with each other and with the applicant's statements on the Forms I-687. The affidavits of [REDACTED] and [REDACTED] conflict with each other regarding the applicant's employment with [REDACTED]. All of the affidavits were lacking in detail regarding the relationship between the applicant and the affiant.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in applicant's I-687

application, supporting affidavits, and CIS interview, and 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.