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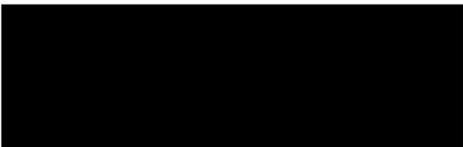
OCT 01 2007

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, New York, New York, 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 asserted that the district director erred in denying the application. Counsel indicated that a brief and/or additional evidence would be submitted within 30 days of the filing date of the appeal. To date, one year and nine months after the filing date of the appeal, counsel has not submitted a brief or any additional evidence to supplement the applicant's appeal. Therefore, the record will be considered complete.

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 May 24, 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 March 1981 to March 1984, at “[redacted] New York” from March 1984 to February 1988, and at “[redacted] New York” from April 1999 to the filing date of the application. At part #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was India “visiting family” from February to April 1984, from October 1986 to November 1986, and from February 1988 to April 1999.

During his interview with a CIS officer on October 25, 2005, the applicant stated that he first entered the United States by ship from India at a California port of entry in March 1981. When the officer asked the applicant about his absences outside the United States during the requisite

period, the applicant stated that he went to India in February 1984 and stayed in his country visiting family for two months. He further stated that he was in India visiting family from February 1986 to March 1986 and from February 1988 to 1999. The applicant's statement during his interview that he was in India from February to March 1986 contradicts his statement on the Form I-687 that he was in India from October to November 1986. The applicant has not provided any explanation for this contradiction in his claimed dates of absence outside the United States.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted a fill-in-the-blank affidavit dated October 21, 2005, from [REDACTED] resident of Bronx, New York. [REDACTED] stated that she first met the applicant at a Christmas party in New York, New York, in December 1981 and he told her that he came from California and wanted to stay in New York if he could find a good job there. [REDACTED] indicated that the applicant resided at [REDACTED] from March 1981 to March 1984 and at [REDACTED] from March 1984 to February 1988. However, [REDACTED] did not provide any information as to the frequency of her contact with the applicant during the requisite period.

The applicant also submitted a fill-in-the blank affidavit dated October 21, 2005, from [REDACTED] a resident of New York, New York. [REDACTED] stated that he first met the applicant in 1981 at a party in New York and they have been good friends since then. [REDACTED] indicated that the applicant resided at [REDACTED] from March 1981 to March 1984 and at [REDACTED] "Man, New York" from March 1984 to February 1988. However, [REDACTED] failed to provide any information regarding the frequency of his contact with the applicant during the requisite period.

The applicant included a letter dated October 16, 2005, from [REDACTED] t, The Sikh Cultural Society, Inc., located at [REDACTED] stated that the applicant had been a member of his organization "since long time." [REDACTED] further stated that the applicant attended services and participated in community activities regularly.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The letter from Mr. [REDACTED] does not conform to this standard. [REDACTED] did not provide the inclusive dates of the applicant's membership in his organization or the applicant's addresses during the membership period. Therefore, this letter will be accorded little evidentiary weight.

On November 3, 2005, the district director informed the applicant of her intention to deny his application. The district director noted that the applicant stated during his interview that he was in India from February to April 1984 and from February 1988 to April 1999. Therefore, the district director stated that it appeared the applicant had not maintained continuous residence in the United States throughout the requisite period. The district director granted the applicant 30 days to submit additional evidence to address his absences outside the United States during the requisite period.

The applicant, in response, stated in an affidavit dated November 30, 2005, that he first entered the United States without inspection on or about March 1981 at or near "Ysidro, California." The applicant explained that he was in India from February to April 1984 for a period of forty days, not for a period of sixty days as stated in the notice of intent to deny.

The district director denied the application on December 1, 2005, because the applicant failed to establish continuous residence in the United States throughout the requisite period. The district director specifically noted in the denial decision that the applicant stated on the Form I-687 and during his interview that he left the United States and returned to India in February 1988 and didn't return to the United States until April 1999. The district director stated that the applicant's absence outside the United States from February 1988 through May 4, 1988 disrupted the applicant's continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 with the service during the application period ending on May 4, 1988.

On appeal, counsel asserts that the district director erred in denying the application. Counsel states, "In the present case, the applicant attempted to file I-687 in September 1987 and his application was not accepted. Hence he has met the continuous residence requirement as required under the law."

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In this case, the applicant himself has specifically stated that he departed the United States in February 1988 and didn't return to the United States until April 1999. The applicant's absence outside the United States from February 1988 to May 4, 1988 represents an absence of

approximately three months, and is more than the 45 days allowed for a single absence outside the United States during the requisite period.

The applicant stated that he was in India visiting family, but he has not claimed, or provided any evidence to establish, that an emergent reason that came unexpectedly into being delayed his return to the United States beyond 45 days. Therefore, it cannot be concluded that the applicant maintained continuous residence in the United States throughout the requisite period.

It is noted that [REDACTED], a United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on September 14, 2003, seeking to classify the applicant as the spouse of a United States citizen. In support of the Form I-130, the applicant submitted a Form G-325A, Biographic Information. The applicant indicated on the form that he was self-employed in Delhi, India, from May 1984 to February 2003. This statement contradicts his current claim that he was residing in the United States from March 1981 to February 1988, at which time he has stated he returned to India. This contradiction raises questions of credibility regarding the applicant's claim of continuous residence in the United States throughout the requisite period.

The contradictions and discrepancies noted above raises serious questions of credibility regarding the applicant's claim of continuous residence in the United States throughout the requisite period. 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).

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 three people concerning that period, all of which lack sufficient detail to corroborate the applicant's claim.

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 applications 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.

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