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Services

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FILE:

MSC-05-243-10667

Office: NEWARK

Date:

SEP 25 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.

A handwritten signature in black 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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to prove eligibility for temporary residence under Section 245A of the Immigration and Nationality Act.

On appeal, the applicant reaffirmed that he had submitted sufficient proof of his residence in the United States prior to 1981 and that he had submitted credible evidence in support of his eligibility. The applicant also questioned whether the CSS/Newman Settlement Agreements actually required the elements that the director alleged.

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 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 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 and 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 Immigration and Naturalization Service (INS) 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 Citizenship and Immigration Services (CIS) on May 31, 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 listed his only address during the requisite period as [REDACTED] from March 1980 to June 1988. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing. With his application, the applicant initially included a declaration from himself. In the declaration, the applicant stated that he entered the United States on March 10, 1980 through New York without inspection. Because it is unsigned, the applicant's declaration carries very little evidentiary weight.

The record indicates the applicant was interviewed by an immigration officer on May 4, 2006. At the interview, the applicant stated that he entered the United States at [REDACTED] International Airport in March 1980 using the name [REDACTED] with a passport and visa. This information is inconsistent with the applicant's statements in his written declaration. Specifically, the applicant indicated in his written declaration that he entered the United States without inspection, while he indicated in the interview that he entered the United States using a visa. This inconsistency calls into question whether the applicant actually entered the United States prior to January 1, 1982.

The applicant submitted additional supporting documentation at the time of his interview with an immigration officer. In his affidavit, [REDACTED] stated that the applicant lived with him at 1589 [REDACTED] from March 1980 to June 1988. The affiant explained that the lease and bills were all in his name. However, the affiant failed to include copies of bills issued in his name during the

requisite period. The affiant attached a copy of a lease agreement as evidence of his presence in the United States during the requisite period. It is noted that the front page of the lease agreement is considerably whiter in color than the last two pages, including the signature page, of the agreement. The name of the landlord, Parkchester Preservation, appears to have been typed over correction fluid. In addition, the name of the landlord is misspelled as "Parkchester Presvasation." This calls into question the authenticity of the lease and, as a result, casts doubt on whether the affiant can actually confirm the applicant's residence during the requisite period. It is also noted that the address listed for the landlord was [REDACTED] Parkchester Preservation currently has a website at [REDACTED]. The website lists the company address as [REDACTED] as opposed to [REDACTED]. The inconsistencies in the company's address and the spelling of the company name as listed on the lease in comparison to the website call into question the authenticity of the lease. In addition, Parkchester Preservation was contacted by the AAO on September 13, 2007. When asked for the date on which the company was established, an employee of Parkchester Preservation indicated the company was established in 1998. This information further calls into question the authenticity of the lease and casts additional doubt on the affiant's ability to confirm the applicant's residence in the United States during the requisite period.

The applicant also provided a letter from [REDACTED] Presiding Elder/General Secretary of New Life Christian Center (NLCC). The letter states, "Our records indicate that [the applicant] joined New Life Christian Center in July 1981. He remained an active member until November 1991. During this period, he served in various capacities and participated fully in all church activities." It is noted that the letter is printed on letterhead that indicates NLCC is an international church with offices outside the United States, and the letter does not specifically confirm the applicant's residence in the United States during the requisite period. Although Mr. [REDACTED] referred to records of the applicant's membership in NLCC, he failed to provide copies of these records. In addition, the applicant failed to list NLCC on Form I-687 when asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc. The lack of supporting documentation, together with the applicant's omission of his NLCC membership on the Form I-687 application, calls into question whether [REDACTED] can actually confirm the applicant resided in the United States during the requisite period. In addition, the letter from [REDACTED] does not conform to regulatory standards regarding attestations by churches, unions, or other organizations. Specifically, the letter does not include the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v).

The applicant also submitted a letter dated April 17, 2006 from Okyeniba Clinic in the Bronx, New York. This letter stated that the applicant was a patient at the clinic since August 6, 1985. This letter does not include the applicant's address or indicate how frequently he visited the clinic. The letter does not specifically confirm that the applicant resided in the United States during the requisite period. In addition, the letter provides considerable detail regarding the applicant's first visit to the clinic, including that the applicant was "treated for acute Pharyngotonsillitis with cervical lymphadenitis which responded to L A bicilli 2.4 million units and amoxillin 500 mg every 8 hours . . ." Despite providing this level of detail, the letter does not refer to the existence of any medical records for the applicant, and copies of medical records are not provided.

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Lastly, the applicant provided a declaration from ██████████. The declarant stated that the applicant is a family friend. He stated that he visited the applicant in April of 1980 when the applicant had just entered the country and was living at ██████████ in the Bronx, New York. The declarant also stated that he picked up the applicant in the Bronx and brought him to Charlotte, North Carolina to spend Christmas. After Christmas, the declarant drove the applicant back to his apartment in the Bronx. This declaration fails to confirm that the applicant resided in the United States during the requisite period. Specifically, the declarant only refers to events occurring during 1980.

In denying the application the director noted the inconsistency between the applicant's written declaration and his statements in his interview with an immigration officer. The director also noted the problems with the lease document provided by ██████████ including the presence of correction fluid and the difference in color between the first page and the other two pages of the lease. The director determined the applicant failed to prove eligibility for temporary residence under Section 245A of the Immigration and Nationality Act.

On appeal, the applicant reaffirmed that he had submitted sufficient proof of his residence in the United States prior to 1981 and that he had submitted credible evidence in support of his eligibility. The applicant also questioned whether the CSS/Newman Settlement Agreements actually required the elements that the director alleged.

In summary, the applicant has not provided any contemporaneous evidence of his residence in the United States relating to the 1981-88 period, and has submitted documentation that conflicts with the applicant's statements. Specifically, the applicant's written statement conflicts with the record of his interview with an immigration officer. In addition, the authenticity of the documentation included with the affidavit from ██████████ is questionable. The letters from NLCC, Okyeniba Clinic, and ██████████ fail to confirm the applicant resided in the United States during the requisite period.

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 provided by the applicant, 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.