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MSC-05-337-11612

Office: HARTFORD

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SEP 27 2007

IN RE:

Applicant:

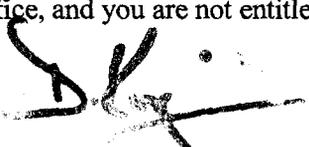
APPLICATION:

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

The director determined the applicant was unable to substantiate his claim to have been in the United States unlawfully prior to January 1, 1982. The applicant also could not prove he had been continuously physically present in the United States since January 1, 1982 until he filed his application for temporary residence. The director also found that the applicant's absence from the United States in 2004 exceeds the 45-day limit and was not brief, casual or innocent. As a result, the director denied the application.

On appeal, the applicant suggested the director's decision was unfair, resubmitted documentation he had already submitted, and submitted new evidence including documentation of the emergency for which he departed the United States for an extended period of time in 2004.

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 September 2, 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 the following addresses during the requisite period: [REDACTED] from August 1981 to January 1984; [REDACTED] New London, Connecticut, from February 1984 to June 1987; and [REDACTED] from August 1987 to June 1990. At part #32 where applicants were asked to list absences from the United States since entry, the only absence the applicant listed during the requisite period was a trip to Pakistan during July 1987 to attend his father's funeral services. At part #33 where applicants were asked to list all employment in the United States, the applicant listed the following positions during the requisite period: salesperson for [REDACTED] from August 1981 to January 1984; salesperson for Sai Systems in Shelton, Connecticut from February 1984 to June 1987; and storekeeper for Mid West Dist. in Chicago, Illinois from August 1987 to June 1990. The applicant also indicated he worked as a manager for Wawa Inc. in East Haven, Connecticut from June 1990 to June 1997.

With his Form I-687 application, the applicant included a notarized declaration from [REDACTED]. In this declaration, the declarant confirmed that the applicant resided in the United States from 1981 to 1992. The declarant listed the applicant's addresses during the requisite period in a manner that is consistent with the information provided on Form I-687. The declarant indicated

he met the applicant because he is a neighbor of the store the applicant used to manage. This statement is found to be inconsistent with the information provided on Form I-687. Specifically, the applicant indicated on Form I-687 that he did not begin working as a manager in the United States until June 1990. This inconsistency calls into question whether the declarant can actually confirm the applicant's residence in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated that he met the applicant "in the prayers" but did not specify the year in which they met. [REDACTED] also stated that the applicant was his roommate from 1985 to 1992. The affiant provided no residential addresses for the applicant during the requisite period. This level of detail is found to be insufficient, particularly because the period during which the affiant stated he lived with the applicant spans two of the three addresses where the applicant lived during the requisite period.

The applicant submitted a declaration from [REDACTED] stated that she was in a position to provide information about the applicant because she was his friend. She indicated she could attest to the fact that the applicant resided in the United States from 1983 to 1990. During this time, she saw or spoke to the applicant approximately four times per week. [REDACTED] listed the following addresses for the applicant: [REDACTED] and [REDACTED].

[REDACTED] This declaration is found to be inconsistent with the information provided on Form I-687. Specifically, during the period that [REDACTED] is willing to confirm the applicant's residence from 1983 to 1990, the applicant also lived at [REDACTED] from August 1987 to June 1990. The omission of this address calls into question whether [REDACTED] can actually confirm the applicant's residence during the requisite period.

In denying the application, the director noted that the applicant was unable to substantiate his claim to have been in the United States unlawfully prior to January 1, 1982; and the applicant could not prove he had been continuously physically present in the United States since January 1, 1982 until he filed his application for temporary residence. The director also found that the applicant's absence from the United States in 2004 exceeds the 45-day limit and was not brief, casual or innocent.

On appeal, the applicant suggested the director's decision was unfair, resubmitted documentation he had already submitted, and submitted new evidence including documentation of the emergency for which he departed the United States for an extended period of time in 2004. Specifically, the applicant provided a letter from [REDACTED] Irshad, assistant medical director for Family Hospital. The letter explains the applicant's wife was admitted to the hospital facility from April 28, 2004 to July 14, 2004. The applicant also provided a copy of his Advance Parole document valid from February 24, 2004 to February 23, 2005. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1). As stated above, according to the CSS/Newman Settlement Agreements, for purposes of establishing residence in 8 C.F.R. § 245a.2(b), the term "until the date of filing" shall mean

until the date the alien attempted to file a completed application and fee or was caused not to timely file, consistent with the Subclass Definitions. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. Since the applicant claimed on the Form I-687 Supplement to have attempted to file an application for legalization between May 5, 1987 and May 4, 1988, the applicant's absence in 2004 is found to fall outside of the requisite period. As a result, this absence is irrelevant to the determination of whether the applicant meets the residency requirements for temporary resident status.

On appeal, the applicant also included a copy of a lease. The first page of the lease lists the applicant as tenant and [REDACTED] as landlord. The last page of the lease includes a signature by the landlord. The spaces for the signature of the tenant and a witness contain no signature. The absence of tenant and witness signatures calls into question its authenticity and limits its value in proving the applicant's continuous residence in the United States.

The record also includes a Form I-485 Application to Register Permanent Residence or Adjust Status submitted by the applicant. With this form, the applicant submitted Form G-325A Biographic Information. Where the applicant was asked to list his last address outside the United States of more than one year, the applicant listed an address in Pakistan from 1947 to March 1990. Where the applicant was asked to list his last occupation abroad, the applicant indicated he operated his own business in Pakistan from 1980 to March 1990. Both these statements are inconsistent with the information provided on Form I-687. This inconsistency both calls into question whether the applicant actually resided in the United States during the requisite period and also tends to indicate the applicant resided in Pakistan during the requisite period.

With his Form I-485 application, the applicant also included another declaration from [REDACTED]. In this declaration, [REDACTED] stated that he could confirm the residence of the applicant in the United States because he "used to talk with [the applicant] quite frequently and was his roommate with him at times from 1985 to 1992 while he was living on [REDACTED] . . . and at [REDACTED]. This declaration is found to be inconsistent with the information provided on Form I-687. Specifically, the declarant failed to list the applicant's residence at [REDACTED] although the applicant lived at this address during the 1985 to 1992 period, from August 1987 to June 1990. This inconsistency calls into question whether the declarant can actually confirm the applicant's residence during the requisite period.

The applicant also included a declaration from [REDACTED] dated January 9, 2003. [REDACTED] indicated he was a family friend of the applicant. He also stated he could attest to the fact that the applicant resided in the United States from 1983 to 1990. [REDACTED] listed the following addresses for the applicant: [REDACTED] and [REDACTED] Connecticut. This declaration is found to be inconsistent with the information provided on Form I-687. Specifically, during the period that [REDACTED] is willing to confirm from 1983 to 1990, the applicant also lived at [REDACTED] from August 1987 to June 1990. The omission of this address calls into question whether [REDACTED] can actually confirm the applicant's residence from 1983 to 1990.

The applicant also included an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated that he knows from personal knowledge that the applicant has resided in the United States since 1981. The affiant indicated he is the applicant's friend. The affiant did not provide address information for the applicant during the requisite period and did not explain the manner in which he became acquainted with the applicant. As a result, this affidavit is found to be lacking in detail.

In summary, the applicant has provided only one piece of contemporaneous evidence of residence in the United States relating to the 1981-88 period, in the form of a lease that was not signed by the applicant and was not witnessed. The applicant has submitted affidavits and declarations that lack sufficient detail or conflict with the applicant's statements. Specifically, the declarations from Mr. [REDACTED] and [REDACTED] are inconsistent with the applicant's statements. The affidavits from [REDACTED] and [REDACTED] are insufficiently detailed. Lastly, the information provided on Form G-325A is inconsistent with the applicant's claim of continuous residence throughout 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 contained in the applicant's I-687 application, Form G-325A, and supporting documents, and 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.