

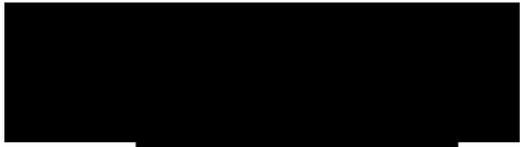
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Services

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FILE:



MSC-05-222-11402

Office: LOS ANGELES

Date: APR 14 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director failed to consider all the evidence contained in the record.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6 and Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 10, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter from [REDACTED] of Peerless Building Management Company in which she stated that the company employed the applicant as a janitor from 1983 to 1987 when he voluntarily quit; and then from 1993 through 1996. The letter does not conform to the regulatory standards for attestations by employers. *See* 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period or whether the information was taken from official company records. *Id.* It is also noted that the record does not contain pay stubs, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, or time cards to corroborate the assertions made by the declarant. It is also noted that the declarant does not attest to knowing the applicant before January 1, 1982, and

therefore, cannot substantiate the applicant's claim of residency throughout the requisite period. Therefore, the statement can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

- A letter dated October 13, 2005 from [REDACTED] in which he stated that he has known the applicant since 1980, that they have maintained a good relationship through the years, and that the applicant was living at [REDACTED] Anaheim, California, in 1980. The declarant also submitted a copy of his California Driver License and copies of his California State University, Northridge transcripts from the fall of 1976 to the fall of 1986. Here, the affiant has failed to specify the circumstances under which he met the applicant and the frequency with which he saw the applicant during the requisite period. There is nothing in the record to show that the information contained in the attestation was based upon the declarant's firsthand knowledge of the applicant's circumstances. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

A letter dated October 13, 2005, from [REDACTED] in which she stated that she has known the applicant since 1982 when they met through a mutual friend, and that they have maintained contact with each other over the years. She submitted a copy of her California Driver License. The declarant fails to identify the mutual friend. Furthermore, she has failed to specify the frequency with which she saw the applicant during the requisite period. The declarant has not provided evidence that she herself was present in the United States during the requisite period. She has failed to provide any relevant and verifiable testimony, such as the applicant's specific address(es) of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. The attestation lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

- A letter dated October 16, 2005, from [REDACTED] in which he stated that he has known the applicant since 1981 when they met through the applicant's brother. He further stated that he and the applicant have become good friends over the years. The declarant submitted a copy of his California Driver License. The declarant fails to identify the applicant's brother. Furthermore, he has failed to specify the frequency with which he saw the applicant during the requisite period. The declarant has not provided evidence that he himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's specific address(es) of residence in this country, to corroborate his claim of residence in the United States since prior to

January 1, 1982. The attestation lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

- A letter dated October 13, 2005 from [REDACTED] in which she stated that she has known the applicant since 1982, and that he was living at [REDACTED] Fresno, California in 1982. The declarant submitted a copy of her California Driver License. Here, the applicant fails to indicate the specific address where the applicant was residing, and whether or not the information given by her was based upon firsthand knowledge of the applicant's circumstances. She has failed to specify the frequency with which she saw the applicant during the requisite period. The declarant has not provided evidence that she herself was present in the United States during the requisite period. She has failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The attestation invariably lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- A letter dated May 2, 2005 from [REDACTED] in which he stated that he has known the applicant since 1980, and that they would regularly speak to each other by phone and visit one another. Here, the affiant has failed to specify the circumstances under which he met the applicant and the frequency with which he saw the applicant during the requisite period. The declarant has not provided evidence that he himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's specific address(es) of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted as evidence copies of his California Identification Card issued to him on August 14, 1983, his California Driver License issued to him on October 15, 1985, and his California Driver License issued to him on March 11, 2004.

In denying the application the director noted that the attestations and other documents submitted by the applicant were insufficient to establish his claim of continuous unlawful residence in the United States since before 1982. The director also noted that the applicant's statements made under oath during his interview with immigration officials were inconsistent with the information he provided on his Form I-687 application.

On appeal, counsel asserts that the director failed to take note of the applicant's Identification Cards issued to him on August 14, 1981, October 15, 1985, and December 30, 1991. Counsel further asserts that the applicant was absent from the United States in July of 1984 and that the indication on his I-687 application that he was absent from the United States in July of 1987 was a typographical error made by the preparer. The applicant submits as evidence a copy of an illegible California Identification Card.

Contrary to counsel's claim, the record of proceeding shows that the applicant submitted copies of his California Identification Card issued to him on August 14, 1983, his California Driver License issued to him on October 15, 1985, and his California Driver License issued to him on March 11, 2004. Furthermore, although counsel claims that the entry contained in the applicant's Form I-687 application, at part #32, was due to a typographical error, and that the applicant was actually absent from the United States in July of 1984, not July of 1987, the applicant stated in a letter which he signed and dated May 2, 2005: "I missed my parents dearly, so when I was informed that my father was ill without even thinking it [sic] I traveled to Guatemala to see him. This was in July [of] 1987." The applicant also stated in that letter: "I recall that upon my arrival from Guatemala, which was in July of 1987, I was informed about the Amnesty Program." It is also noted that the applicant stated under penalty of perjury on his Form G-325 Biographic Information, signed and dated March 3, 1992, that he resided at [REDACTED], Del Golfo, Guatemala, from September of 1953 to December of 1991. 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. It is incumbent upon 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, 591-92 (BIA 1988). Here, the applicant has failed to submit any objective evidence to explain or justify the blatant contradictions.

In summary, the applicant has not provided sufficient evidence to establish his continuous unlawful residence in the United States throughout the requisite period. Furthermore, he has submitted attestations that are lacking in detail and can therefore be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period. In addition, the applicant has failed to adequately address the issues raised by the director in a manner sufficient to overcome the denial. There has been no plausible explanation or independent documentation provided to explain the inconsistencies in the applicant's statements.

The absence of sufficiently detailed 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 Form I-687 application, Form G-325A and during his interview with immigration officials, 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 for the requisite period 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.