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FILE:

MSC-06-025-14122

Office: NATIONAL BENEFITS CENTER

Date:

APR 30 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:

SELF-REPRESENTED

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, National Benefits Center. 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. Specifically, the director stated that though the applicant had submitted evidence, an affidavit, in support of his application, this affidavit did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. In saying this, the director noted that the affiant from whom this affidavit was submitted did not state that the applicant was in the United States during 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, the applicant submits an additional affidavit in support of his application.

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) 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. CSS Settlement Agreement paragraph 11 at page 6; 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 25, 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 address in the United States for the duration of the requisite period to be: [REDACTED] in Queens, New York where he shows he lived from March 1981 until August 1988. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his first and only employment in the United States to be working for Hoysala Restaurant where he worked from June of 2002 until he submitted his Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In his Notice of Intent to Deny (NOID), issued on November 22, 2005, the director of the National Benefits Center stated that the applicant had not submitted evidence that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date that he or his parent or spouse was turned away by the Service when they tried to apply for legalization. The director also noted that the applicant failed to provide evidence that he was continuously physically present in the United States from November 6, 1986 until the end of the requisite period or that he was

admissible as an immigrant. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following document:

- An affidavit from [REDACTED] that is not dated or notarized. Here, the affiant, who did not submit identity documents with the affidavit, states that he first met the applicant in May of 1988 at a birthday party. It is noted here that the issue in this proceeding is whether the applicant can prove by a preponderance of the evidence that he entered the United States on a date before January 1, 1982 and then resided continuously in the United States in an unlawful manner from that date and until he or his parents attempted to file for legalization during the original filing period. As was previously noted, the original filing period was from May 5, 1987 until May 4, 1988. Because this affiant claims to have met the applicant on an unspecified date in May of 1988 this affidavit only pertains to, at most, four (4) days of the requisite period. Therefore, this affidavit carries no weight in establishing that the applicant entered the United States before January 1, 1982, as this affiant did not meet the applicant until 1988. Further, this affidavit carries very minimal weight in establishing that the applicant was present in the United States for any part of the requisite period. This affiant does not note that the applicant was residing in the United States when he met him. Because this affidavit is significantly lacking in detail and because it pertains to at the most four (4) days of the requisite period, it carries no weight in establishing that the applicant resided in the United States for the duration of the requisite period.

Though the director noted that this affidavit was received timely on December 19, 2005, he found that it did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period for the reasons noted above. Because the applicant failed to meet his burden, the director denied the application.

On appeal, the applicant submits an additional statement in support of his application and an additional affidavit. In his statement, that is dated October 5, 2006 and is not notarized, the applicant states that he did not previously submit an affidavit from this new affiant because he had lost contact with him. Details of the new statement are as follows:

- A notarized letter from [REDACTED] dated October 1, 2006. In this letter, [REDACTED] states that the applicant and his father lived in his apartment for two (2) months in 1988. He states that the address of this apartment was [REDACTED] in Jamaica, New York. It is noted here that the applicant did not indicate he ever resided at this address before, during or after the year 1988 on his Form I-687. Mr. [REDACTED] goes on to say that he met the applicant at a birthday party in 1988. Here, the affiant states that the applicant resided at an address that is not consistent with one the applicant showed he ever resided at on his Form I-687. Further, because this affiant states that he did not meet the applicant until 1988, this letter carries no weight in establishing that the applicant entered the United States before January 1, 1982 and then resided continuously in the United States in an unlawful manner for the duration of the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before 1982 to 1988 or of his entry to the United States before January 1, 1982. The statements submitted by the applicant were not submitted with phone numbers at which the affiants could be reached to verify information contained in their statements. Furthermore, because the individuals from whom the statements were submitted did not meet the applicant until 1988, they do not pertain to the

duration of the requisite period. That one affiant submitted a statement in which he claimed that the applicant lived at an address at which the applicant did not show he ever resided raises questions as to the credibility of the statements made by that affiant.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistency noted regarding the applicant's address of residence during part of the requisite period seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.