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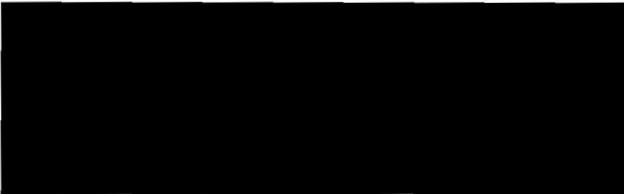
Applicant:



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, California. 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, on March 4, 2005. The applicant was interviewed on May 26, 2006 in connection with his Form I-687. On June 1, 2006 the director denied the application, determining 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 for the applicant asserts that Citizenship and Immigration Services (CIS) was obligated to issue a Notice of Intent to Deny (NOID) the application pursuant to the CSS Settlement Agreement, if it doubted the applicant's qualification as a CSS class member. Counsel seems to contend that as one of the grounds for denial of the I-687 was the fact that the applicant did not adequately establish his continuous unlawful presence in the U.S. prior to January 1, 1982, CIS was required to issue a NOID prior to adjudicating the applicant's temporary residency claim. Counsel also asserts that CIS ignored substantial evidence of record, misinterpreted the applicant's testimony given at his interview, and failed to accord due weight and consideration to the evidence when determining that the applicant was not eligible for status as a temporary resident. Counsel also asserts that the applicant's criminal record does not prevent his eligibility for legalization, as the CSS Settlement Agreement was designed to restore an applicant to the position he had been in if legalization had been originally granted within the period of May 5, 1987 to May 4, 1988.¹

Preliminarily, it is noted that, on appeal, the applicant's attorney is mistaken in the assertion that the director is required to issue a NOID pursuant to paragraph 7, page 4 of the CSS Settlement Agreement. According to the settlement agreement, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Thus the director was not required to issue a NOID.

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 applicant attempted to file the application. 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

¹ The record contains evidence that reflects the applicant has been convicted of four misdemeanors as defined at 8 C.F.R. § 245a.1(o), in the State of California on May 15, 1990, January 20, 1995, November 3, 1997, and May 26, 1998.

that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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 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. 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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 AAO has reviewed the affidavits and statements in the record submitted to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the required period. The affidavits and letters submitted do not contain sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the document originators and their subsequent interaction to establish the applicant's residence during the requisite time period. The statements and

letters reflect a lack of concrete and specific details. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

The AAO has also reviewed an April 28, 2003 letter submitted by the parish secretary of the Nativity Catholic Church in Torrance, California. The letter appears to be written on the church letterhead but does not include the church seal. The letter indicates that the applicant has been a member of the parish since 1983 and has helped different groups in the church. The parish secretary, however, does not indicate the inclusive dates of the applicant's church membership and does not establish the origin of the information she is providing as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the applicant does not list his affiliation with this church or any other church on the Form I-687. The AAO does not find this letter probative.

The AAO has further reviewed employment letters submitted to show that the applicant was employed during the requisite time period. One letter dated December 25, 2004 indicates that the letter writer met the applicant in 1981 and employed the applicant to perform roofing work on a temporary basis and has established a friendship with the applicant. A second letter from the same person notarized June 28, 1990 indicates that the applicant was a part-time employee of [REDACTED] from November 1981 to September 1986. Letters dated August 16, 2001 and December 16, 2004 indicate that the applicant has been in the continuous employ of Wetmore Roofing Co., Inc. since 1986. The employment letters do not include periods of layoff, declare whether the information was taken from company records, identify the location of such company records, and state whether the records are accessible or state the reason why the records are not available as required under 8 C.F.R. § 245a.2(d)(3)(i). The AAO does not find the applicant's employment letters probative.

The applicant also submits a number of photocopies of receipts for services at various times as well as an original receipt from Century City Luggage dated June 1984, an original receipt for tires purchased in April 1985, and an original receipt for dry cleaning services received in 1988. Several of the receipts do not include the applicant's complete name and show barely discernable dates. The applicant has also provided five original envelopes addressed to the applicant that bear postmarks in 1986, 1987, and 1988. The envelopes are evidence only that the applicant was present or reachable at United States addresses on or about the date of the postmark on the envelopes.

These deficient statements, affidavits, receipts, and envelopes and the applicant's statements comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 lack of credible supporting documentation, it is concluded that the applicant has failed to meet his burden of proof and 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*.

In addition, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible to adjust status under Section 245A of the Immigration and Nationality Act and CSS/Newman Settlement Agreements.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Municipal Court of Compton Courthouse Judicial District, County of Los Angeles, State of California:

- **Court Case No.** [REDACTED] filed on February 14, 1990 for a violation of section 23152(B), .08% more weight alcohol while driving a vehicle which resulted in the applicant being convicted on May 15, 1990. California Vehicle Code Section 23536 provides that a person convicted of a first violation of Section 23152 shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months . . .
- **Court Case No.** [REDACTED] filed on January 18, 1995 for a violation of 2800.1, attempt to evade pursuing peace officer which resulted in the applicant being convicted on January 20, 1995. The California Vehicle Code provides that this is a misdemeanor punishable by imprisonment in a county jail for not more than one year . . .

The record contains court documents that reflect the applicant has been convicted of the following misdemeanor offenses in the Municipal Court of Long Beach Courthouse Judicial District, County of Los Angeles, State of California:

- Court Case No. [REDACTED] filed on August 28, 1997 for a violation of section 23152(B), .08% more weight alcohol while driving a vehicle which resulted in the applicant being convicted on November 3, 1997. California Vehicle Code section 23540(a) states: "If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153, that resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year . . ."
- Court Case No. [REDACTED] filed on May 4, 1998 for a violation of section 23103, reckless driving no injury which resulted in the applicant being convicted on May 26, 1998. The California Vehicle Code provides that the punishment for a conviction of this offense is imprisonment in a county jail for not less than five days nor more than 90 days.

Counsel asserts that had the applicant been granted legalization within the period from May 5, 1987 to May 4, 1988 his misdemeanor convictions would not have any effect on his immigration status. Counsel's contention that the applicant is eligible for legalization despite the above convictions because the CSS Settlement Agreement was designed to restore an applicant to the position he had been in if legalization were originally granted is without merit. Counsel cites no statutory or regulatory provision, no precedential decision, and no statement in the settlement agreements to support his contention. The AAO finds that in addition to proving by a preponderance of the evidence that the applicant has resided in the United States for the requisite periods, the applicant must also show he is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The applicant has not established this essential element.

An alien applying to adjust status pursuant to Section 245A of the Act 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 applicant has failed to meet this burden.

The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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