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U.S. Citizenship
and Immigration
Services

41

FILE:

MSC-06-096-12657

Office: NEWARK

Date:

AUG 27 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 if your case was 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, Newark. 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 noted that the applicant submitted no credible documentary evidence in support of his application, and that the affidavits presented in lieu of primary contemporaneous evidence lacked sufficient detail to establish the applicant's entry and residence in the United States for the requisite statutory 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.

The applicant is represented by counsel on appeal. Counsel asserts that the applicant has met the requirements to establish eligibility for temporary resident status pursuant to the settlement agreements. Counsel maintains that the affidavits offered in support of the application are sufficiently detailed, and that the deficiencies noted in the Notice of Intent to Deny are "irrelevant and immaterial." Counsel presents additional copies of previously submitted affidavits.

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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of 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 September 21, 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 residence in the United States for the statutory period to be on:

[REDACTED] from October 1981 to December 1982,
[REDACTED] from January 1983 to December 1987, and
[REDACTED] from January 1988 to April 1991.

Similarly, at part #33, when asked to show employment in the United States since entry, he stated that he was "self-employed" as a laborer, gas attendant, and taxi driver. In support of his application, the applicant presented a number of sworn declarations from the following individuals:

- [REDACTED], dated August 8, 1991. [REDACTED] who describes himself as a "farmer & grower" in Caruthers, CA, avers that the applicant worked for him picking produce from January 1983 to March 1985, and again from December 1986 to December 1987. The affiant stated that the applicant was paid in cash.
- [REDACTED] sworn declaration is not dated. The affiant stated that he has known the applicant since 1981, when the applicant resided at [REDACTED]. The affiant claimed that the applicant is "a valuable member of community (sic) and participates in community functions."
- [REDACTED] dated June 16, 2003. [REDACTED] avers that he has known the applicant since 1987, when the applicant resided at [REDACTED]. The affiant avers that they met at a Sikh temple and have been friends since that time.
- [REDACTED], dated June 14, 2003. [REDACTED] stated therein that he has known the applicant since 1985 when they met at a family birthday party in Caruthers, CA. The affiant stated that when he first met the applicant, the applicant was residing in New York.
- [REDACTED] dated June 16, 2003. [REDACTED] averred that he met the applicant in 1988 when he resided at [REDACTED]. The affiant stated that they met at the home of a friend, and that they participate in many community functions together.
- [REDACTED] dated June 23, 2003. The affiant stated that he has known the applicant since 1986, and that he "has been very helpful to the community."
- [REDACTED] dated June 16, 2003. [REDACTED]'s statement is not a sworn, notarized affidavit. [REDACTED] stated that he resides in Denair, CA, and that he has known the applicant since 1987, when the applicant resided in Caruthers, CA. [REDACTED] stated that he and the applicant "are known to each other and have met during his trips to California."

The applicant submitted no other documentation in support of his application for temporary residence. On July 20, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any documentation to corroborate the information contained in the above affidavits, and that none of the affidavits submitted contain sufficient detail to confirm the affiants' relationship with him throughout the statutory period.

The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

In response to the NOID, the applicant submitted a letter from his counsel of record dated August 16, 2006. Counsel explains that the applicant entered the United States without inspection in 1981 with the assistance of an "agent", and thus, has no "direct evidence or documentation to prove his entry." Counsel maintained that the affidavits submitted on behalf of the applicant contain "sufficient and substantial proof" of his residence in the United States since 1981. Ultimately, counsel stated that the applicant is in the process of gathering additional proof. The AAO notes that no other documentary evidence was submitted thereafter.

The director denied the application for temporary residence on August 24, 2006. In denying the application, the director noted that the only evidence submitted by the applicant in response to the NOID was a statement from his counsel. The director observed that the applicant failed to present any additional evidence, and failed to correct the deficiencies outlined in the NOID. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel for the applicant argues that the "objections raised in the NOID were irrelevant and immaterial" and that "had the applicant been given another chance each objection as raised in the NOID could have been clarified." The applicant submitted photocopies of the previously offered affidavits from [REDACTED]

First and foremost, the AAO notes that, upon the issuance of the NOID, and contrary to counsel's assertions on appeal, the applicant was notified of the deficiencies contained in the affidavits and given an additional 30 days to correct them. The applicant offered nothing but a statement from his attorney in response.

It is noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or how they have direct, personal knowledge of the address at which he was residing during the critical time period commencing on January 1, 1982. Furthermore, the affidavits contain no information to corroborate the applicant's assertions regarding his entry and residence in the United States throughout the statutory period. For example, the affidavit from [REDACTED] contains no evidence to corroborate his assertion that he is a farmer in California, or that the applicant worked for him at any given time.

The declarants' uniformly ambiguous references to meeting at the homes of friends, and claiming a long standing friendship over a period of many years are not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarants' claim to have a friendship with the applicant spanning over 20 years. Furthermore, the AAO notes that the affidavits submitted by [REDACTED]

Gill appear to be inherently unreliable, as they list the applicant as residing at a different address from that listed by the applicant on the Form I-687.

For these reasons, all of these declarations listed above have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

In summary, the applicant has not provided any probative or credible evidence of residence in the United States relating to the period from January 1, 1982 to 1988 or of entry to the United States before January 1, 1982 except for his own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 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.