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FILE:

MSC-05-288-13555

Office: LOS ANGELES

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, the applicant stated that the director's decision does not question the applicant's testimony, identify it as contradictory, or explain the reasons for denying the application, other than to state that the applicant failed to provide sufficient evidence to establish his residence in the United States during the requisite period. The applicant attempted to explain an apparent inconsistency between two letters that he submitted from former employers. The applicant also provided copies of documents he had already submitted, together with a FICA earnings summary from the Social Security Administration in Lakewood, California.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his 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 July 15, 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 only the following address during the requisite period: [REDACTED] November 1980 to April 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only the following position during the requisite period: Mechanic for Apollo Tire Co. Inc. at [REDACTED] California at a salary of \$13,327.00 per year from November 1984 to September 1992.

With his application for temporary resident status, the applicant provided voluminous documentation. Most of the documents submitted do not relate to the applicant's residence during requisite period. These include tax documentation and pay stubs for years falling outside the requisite period, copies of photographs taken on dates and in locations that are unidentifiable, and documents that do not include the applicant's name.

In support of his claim of continuous unlawful residence in this country during the requisite period, the applicant provided numerous documents. The applicant provided two receipts from Cabral Upholstery in Los Angeles, California listing his name. The receipt dated November 18, 1981 was prepared on a receipt form listing ' [REDACTED] and the receipt dated February 10, 1982 was prepared on a receipt form listing ' [REDACTED] The fact that the receipts appear to fall close to each other in reverse chronological order casts some doubt on their authenticity. In addition, these receipts do not list the applicant's address. Therefore, they constitute only very limited evidence of the applicant's presence in the United States on two specific dates in 1981 and 1982.

The applicant provided an invoice from Rene Furniture in Huntington Park, California listing his name and a delivery date of July 6, 1983. Since the receipt fails to list the applicant's address, it merely constitutes some evidence of the applicant's presence in the United States at some time prior to July 6, 1983.

The applicant provided pay stubs for employment with Apollo Tire Co. at [REDACTED] Canoga Park, California for August 6, 1987 and August 13, 1987. This constitutes some evidence that the applicant resided in the United States in August 1987.

The applicant submitted a Form W-2 Wage and Tax Statement for 1986, together with related Form 1040 U.S. Individual Income Tax Return. The Form W-2 indicates that the applicant was employed by Apollo Tire Co., Inc. at the Saticoy Street address during 1986, and lists total wages of \$11,954.97. The Form W-2 lists the applicant's address as [REDACTED] California. The Form 1040 lists a total income of \$11,955 and lists the applicant's address as [REDACTED] [REDACTED] The addresses listed for the applicant on the Form 1040 and Form W-2 are inconsistent with each other and with the information provided on the applicant's Form I-687. These inconsistencies cast some doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period.

The applicant provided a letter dated August 30, 1993 from [REDACTED] President of Apollo Tire at the Saticoy Street address, which states that the applicant was employed by Apollo Tire Co., Inc. from November 1, 1984 until September 23, 1992. This letter does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this document will be given very little weight.

The applicant also provided a letter dated August 27, 1993 from [REDACTED] Service Coordinator with Apollo Tire and Service Centers. The letter is printed on letterhead that lists the company's address as [REDACTED] California. [REDACTED] attached his business card to the letter. Printed on the business card is the address [REDACTED] California. Handwritten over the printed address is [REDACTED] Canyon Country, California. The letter states that the applicant has been employed with Apollo Tire Service since February of 1993. This letter appears to be inconsistent with the letter from [REDACTED] which indicates that the applicant began working for Apollo Tire Co., Inc. in 1984. This inconsistency casts some doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The applicant provided a notarized declaration from [REDACTED] which states that the declarant has known and been acquainted with the applicant in the United States since 1980. The declarant stated that he and the applicant used to work together in "different places" as mechanics during the years 1980 to 1984. This information is inconsistent with the information provided on the Form I-687 application, where the applicant failed to list any employment in the United States prior to 1984. In addition, the declarant failed to provide detail regarding the region where the applicant worked and resided in the United States, the specific location where he met the applicant, and their frequency of contact during the relevant period of residence. As a result of its inconsistency with the Form I-687 and general lack of detail, this declaration will be given very little weight.

The applicant provided an affidavit from [REDACTED], which states that the applicant and the affiant traveled to Mexico on May 2, 1987 and "came back" on May 30, 1987. This affidavit fails to specify the location from which the applicant and the affiant departed to visit Mexico. As a result, it fails to state that the applicant resided in the United States during the requisite period. Therefore, it will be given no evidentiary weight.

The record also contains a Form I-687 application signed by the applicant on September 7, 1993. At part #33 of the application, where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following addresses during the requisite period: [REDACTED], California from 1980 to 1986; and Lynwood, California from 1986 to 1989. This information is inconsistent with the current Form I-687, which indicates that the applicant resided at the [REDACTED] address throughout the requisite period. At part #36 of the 1993 Form I-687 where applicants were asked to list all employment in the United States since first entry, the applicant listed only the following positions: Mechanic for [REDACTED] in areas of Los Angeles City from 1980 to 1984; and tire fixer for Apollo Tire & Service Center at [REDACTED] California from 1984 to present. This information is also inconsistent with the current Form I-687, where the applicant indicated only that he worked as a Mechanic for Apollo Tire Co. Inc. at the Saticoy Street address in Canoga Park from November 1984 to September 1992. These inconsistencies cast doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period.

In denying the application 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.

On appeal, the applicant stated that the director's decision does not question the applicant's testimony, identify it as contradictory, or explain the reasons for denying the application, other than to state that the applicant failed to provide sufficient evidence to establish his residence in the United States during the requisite period. The applicant also attempted to explain the inconsistency between the two letters he provided related to his employment with Apollo Tire Co., Inc. He stated that the letter from [REDACTED] is from the tire store located in Canoga Park and is for the period of employment from November 1984. He stated that the letter from Apollo Tire dated August 26, 2006 is from Apollo Tire in Canyon Country and is verifying his employment of February 1993. This explanation is found to be unreasonable under the circumstances. First, the record does not contain a letter related to Apollo Tire dated August 26, 2006. Second, even if the applicant erroneously identified the letter as dated August 26, 2006 instead of August 27, 1993, the applicant failed to explain the fact that the August 27 letter is printed on Canoga Park letterhead but fails to indicate that the applicant began working for the employer in Canoga Park in November 1984. Third, when asked to list all employment in the United States on the current Form I-687, the applicant failed to list any employment with Apollo Tire beginning in February 1993. Lastly, should the applicant's explanation have been reasonable, it still would not have been sufficient to overcome the inconsistency between the two Apollo Tire letters because the applicant's explanation is not supported by independent objective evidence, such as an additional letter from Apollo Tire explaining the company relationships and confirming all of the applicant's claimed employment. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the applicant also provided copies of documents he had already submitted, together with a FICA earnings summary from the Social Security Administration in Lakewood, California. The earnings summary lists the applicant's name and documents annual earnings ranging from \$1500 to \$2200 for each year from 1981 through 1987. This information is somewhat inconsistent with the applicant's statements on the current Form I-687, where he indicated that he was employed by Apollo Tire Co., Inc. from November 1984 through the end of the requisite period and earned more than \$11,000 per year. This inconsistency casts some doubt on the applicant's claim to have resided in the United States throughout the requisite period. In addition, the limited income that the earnings summary documents for the applicant tends to suggest that he worked in the United States for several brief periods, rather than that he

resided continuously in the United States during the requisite period. Therefore, this document will be given minimal probative value.

In summary, the applicant has provided evidence of residence in the United States relating to the requisite period that is inconsistent with other evidence or the current Form I-687, lacks sufficient detail, contains characteristics that cast doubt on its authenticity, fails to list the applicant's address, does not conform to regulatory standards, or fails to state that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed 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 contradictions between the applicant's current Form I-687, 1993 Form I-687, and the documents he submitted, and given 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.