



U.S. Citizenship
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FILE: [REDACTED] MSC 04 338 10324

Office: LOS ANGELES

Date: **AUG 28 2008**

IN RE: Applicant: [REDACTED]

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, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

AFFIDAVITS/WITNESS STATEMENTS

- [REDACTED] submitted an unsworn statement dated January 17, 2007 wherein stated that he had known the applicant since 1981, and that the applicant had been a tenant of his for many years. The statement is not notarized and does not establish that the applicant was in the United States prior to January 1, 1982. [REDACTED] does not detail his relationship with the applicant, does not state that the applicant was in the United States when the two became acquainted, and does not establish that the applicant has been continuously present in the United States for the requisite period.
- [REDACTED] (the applicant's mother) issued an unsworn statement dated July 27, 1990 stating that the applicant came to live with her in June of 1981 because she was ill and could no longer work. The statement is not notarized and provides no additional information. The statement does not establish the applicant's continuous unlawful residence in the United States throughout the requisite period.

- [REDACTED] submitted a notarized statement wherein she states that in June of 1987 she traveled with the applicant to Mexico for a doctor's visit, returning by car without inspection in July of 1987. The statement does not establish the applicant's continuous unlawful residence in the United States throughout the requisite period.
- [REDACTED] submitted a notarized statement wherein she states that the applicant is a nice person, hard working and does not use drugs or alcohol. The statement does not establish the applicant's continuous unlawful residence in the United States throughout the requisite period.
- [REDACTED] issued an unsworn statement dated October 11, 2006, wherein [REDACTED] states that he has known the applicant since 1982, and that the applicant has lived in Maywood, CA for many years. The statement is not notarized and does not establish the applicant's continuous unlawful presence in the United States for the requisite period.
- [REDACTED] issued an unsworn statement dated July 13, 2004 wherein [REDACTED] states that the applicant has been a patient of his since February of 1990. [REDACTED] states that he has known the applicant for 14 years. The statement is not notarized and is not supported by medical records. The statement does not establish the applicant's continuous unlawful presence in the United States for the requisite period.

[REDACTED] issued an unsworn statement dated October 10, 2006 wherein he states that he has known the applicant since 1984, and that the applicant has been his patient since 1984. This statement contradicts the doctor's previous statement of July 13, 2004 wherein he states that the applicant has been his patient since February of 1990, and that he has known the applicant for 14 years. The statement is not notarized and is not supported by medical records. Further, the statement does not establish the applicant's continuous unlawful presence in the United States for the requisite period.

As stated earlier in this decision, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The evidence submitted by the applicant in support of his application includes the above referenced witness statements. The witness statements indicate generally that the writers have known the applicant for various time periods, and that the applicant has resided in the United States for various periods of time during the requisite period. None of the statements provide detailed information of the statement writer's relationship with the applicant or establish that the applicant has resided continuously and unlawfully in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements do not provide detailed information establishing the extent of the affiant's association or relationship with the applicant, or detailed accounts of the affiant's ongoing association establishing a relationship under which the writers could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative,

witness statements and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the witness statements presented fail to establish continuous residence in an unlawful status in the United States for the requisite period.

EMPLOYMENT

issued an unsworn statement on July 15, 1990 stating that the applicant has continually worked for his restaurant (Las Trancas Restaurant) as a cook from December of 1984 until July 15, 1990 (the statement date).

- issued an unsworn and undated statement wherein they state that the applicant has been known to them for many years. state that the applicant has been employed by Las Trancas Restaurant since 1990, and that he was currently being paid \$6.75 per hour.

issued an unsworn statement dated July 15, 1985 wherein he states that the applicant was employed by him as a landscaper from December of 1981 through December of 1984 earning \$150.00 per week.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statements submitted by the applicant are of little probative value as they fail to provide all information required by the above-cited regulation. The statements do not provide the applicant's address during employment, show periods of layoff (or state that there were none), declare whether the information attested to was taken from employment records, identify the location of any such records, or state whether the records are accessible, and if not, why not. Further, the statements presented are contradictory. states in one statement that the applicant was employed by him from December of 1984 until July 15, 1990. A second statement from states that the applicant was employed by them since 1990. Neither any explanation for the discrepancy. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted a copy of an amended real estate rental agreement that is unsigned by any lessee. That document is dated July 10, 1981 and states that the applicant may reside in the rented premises located at [REDACTED] without an increase in the monthly rent amount. The lessor is [REDACTED]. The applicant submitted another rental agreement dated June 2, 1981 listing the applicant as the lessee for rental property located at [REDACTED]. The rental agreement is not signed by the applicant, but appears to have a "PAID" stamp on the document by a section referencing a security deposit. The lessor for that premises is [REDACTED]. It is unclear from the evidence presented that the applicant resided in either of these properties, or that he ever paid any rent for these properties. It is not clear whether the leases cover the same property. If so, there is no evidence of record explaining why the lessors have different names. The leases are not probative of the applicant's continuous residence in the United States throughout the requisite period.

The applicant also submitted printouts for dental bills with the printouts being dated July 17, 1991. The printouts are under the heading of [REDACTED] and list the applicant as a patient. The printouts would indicate that the applicant was examined by this office in 1981, 1983 and 1984. The printouts are not, however, supported by copies of medical records detailing the treatment rendered or statements from the treating physicians. The treating physician noted on the printouts is [REDACTED]. The applicant presented other evidence indicating that his dentist is [REDACTED] who in one letter states that he has treated the applicant since 1984, and in a second letter states that he has been treating the applicant since 1990. The dental records/printouts do not establish the applicant's unlawful presence in the United States throughout the requisite period.

The applicant submitted no additional evidence in support of his Form I-687 petition.

Therefore, based upon the foregoing, the applicant 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.