



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 04 261 10016

Office: SALT LAKE CITY

Date: DEC 17 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:

[Redacted]

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.

John Grissom, Acting 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 Director, Salt Lake City. 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. Specifically, the director noted that the witness statements submitted by the applicant, as well as the applicant's own statement, did not sustain the applicant's burden of proof and did not overcome discrepancies in the applicant's testimony at his legalization interview.

On appeal, the applicant states that the evidence of record establishes that he is eligible for the immigration benefit sought, and that any discrepancies in his testimony at his legalization interview were the result of misunderstanding the examiner's question. The applicant notes that he corrected his answer during the interview to establish that he had, in fact, attempted to apply for legalization in 1987 but was "front desked" by U.S. immigration officials.

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The director issued a Notice Of Intent To Deny (NOID) the applicant’s claim and therein noted, in part, that the applicant had stated at his legalization interview that he had never attempted to apply for temporary resident status in the past, but that the applicant then changed his statement after further questioning to state that he had attempted to apply for temporary resident status in September of 1987. The applicant stated that his application was not accepted by immigration officials in 1987. The applicant noted on the Form I-687 that he left the United States for a brief period of time in 1986 to attend a funeral in Canada. The notes from the applicant’s legalization interview on December 1, 2005 indicate that the applicant stated that he had never applied for legalization before, but that he then changed his statement saying that he attempted to apply in 1987 but was front desked. The record contains insufficient documentation, given the applicant’s sworn statement regarding the noted discrepancy at his legalization interview, to determine that the applicant’s testimony contains discrepancies regarding this issue which would lead to an adverse credibility determination about this specific issue. The application, however, may not be approved for the reasons hereinafter set forth.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January of 1982, and lived in an unlawful status during the requisite period, consists of the applicant's sworn statements and four witness statements. The sworn statements of the applicant indicate that the applicant entered the United States without inspection in September of 1981, crossing the Mexican border. He indicates that he resided in California with his mother until the two left the country and returned to India in 1988 (after having attempted to file legalization applications). The applicant ultimately returned to the United States in 2004 on a visitor's visa.

The applicant also submitted four notarized witness statements in support of his application. These statements are similar in nature and stated generally that the witnesses know the applicant, that to their knowledge and belief the applicant has been in the United States since 1981, and that they saw the applicant on various occasions at Temple, in the community and/or at various social/family gatherings. The statements provide no additional detail about the witnesses association with the applicant or his activities and whereabouts during the requisite period.

The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

Although not required, the applicant has not provided any other contemporaneous evidence of residence in the United States for the duration of 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 provided did not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses 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 considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witnesses do, by virtue of that relationship, have knowledge of facts asserted.

Finally, the applicant's statement alone is not sufficient to sustain the burden of proof in these proceedings. 8 C.F.R. § 245a.2(d)(6). 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 evidence submitted fails to establish continuous residence in an unlawful status in the United States for the duration of the requisite period.

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.