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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05-208-10284

Office: LOS ANGELES

Date: DEC 30 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 "John F. Grissom".

John F. 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, Los Angeles, and is now before the Administrative Appeals Office 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 denied the application after determining 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 noted that although the applicant had submitted copies of his 2003 and 2004 tax returns as requested, he had failed to provide a statement from the Social Security Administration listing his years of employment and evidence of residence in the United States from December 1981 to 1988, as requested in the Request for Evidence (RFE) issued to the applicant after his immigration interview on November 16, 2005. 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 did respond to the RFE in a timely manner and is resubmitting the documents requested.

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 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 United States Citizenship and Immigration Services (USCIS) on April 26, 2005. The applicant submitted the following attestations as evidence:

- An affidavit from [REDACTED] in which she stated that she is a neighbor of [REDACTED] and that applicant lived with [REDACTED] aunt in Pacoima from 1981 to 1985. The affiant also stated that she was a neighbor of [REDACTED] when she first met the applicant in February of 1981. She further stated that the applicant would perform odd jobs for her around the house.
- An affidavit from [REDACTED] in which she stated that she is a neighbor of [REDACTED] and that the applicant who is [REDACTED] nephew, has lived with her from March 1980 to April 1985, when he moved in with his sister. The affiant also stated that the applicant would perform odd jobs in the neighborhood and was paid in cash.
- An affidavit from [REDACTED] in which he stated he was a friend of the [REDACTED] and [REDACTED] families and has visited their homes during social occasions. He also stated that he met the applicant at one of the parties in March of 1981.
- A letter from the owner of Roman's Market in Pacoima, California in which he stated that the applicant has been a customer of the market since 1981.
- An affidavit from [REDACTED] in which she stated that she was a neighbor of [REDACTED] in 1986 and that the applicant lived with [REDACTED] his sister, at that time. She also stated that the applicant would perform odd jobs for her and that she would pay him in cash.

Here, the affiants have failed to specify the applicant's place of residence or address(es), or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. They have also failed to specify their addresses as neighbors of the applicant's family. It is further noted that the affiants have failed to specify the frequency with which they saw and communicated with the applicant during the requisite period. Because the affidavits are lacking in detail, they can be afforded only minimal weight in establishing the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

The applicant also submitted letters from [REDACTED] who stated that she has known the applicant for some time, and [REDACTED] in which he stated that he has known the applicant to have lived in the United States since 1981. These statements are lacking in detail, and therefore, will be accorded little weight in establishing the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

In denying the application the director noted that the applicant had failed to provide the preponderance of evidence necessary to establish his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. The applicant submitted the following documentation as evidence on appeal:

- An earnings statement from the Social Security Administrative Branch Office in San Fernando, California that lists the applicant's earnings from 1993 through 2002;
- A letter from the Human Resource Director of Topco Sales in which she stated that the company has employed the applicant since November 18, 1993; and,
- A memo from [REDACTED] in which it is stated that based upon examination, the applicant has been without hearing and has also been speechless since birth.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. The affidavits submitted, while providing some evidence of the applicant's presence in the United States, are lacking in detail and are insufficient to establish his continuous unlawful residence in the country throughout the requisite period. The evidence submitted on appeal is dated subsequent to the requisite period, and therefore, will not be considered by the AAO as evidence sufficient to support the applicant's claimed eligibility for the immigration benefit sought. The applicant has failed to provide evidence of his residence in the United States throughout the requisite period.

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 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 applicant's reliance upon affidavits with little 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.