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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-06-090-15898

Office: NATIONAL BENEFITS CENTER

Date: FEB 12 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert F. 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 Director, National Benefits Center. 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 submits additional documentation as evidence of his continuous residence in the United States during the requisite period.

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)(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).

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.* 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 (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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 29, 2005. The applicant signed this application under penalty of perjury, certifying that the information is true and correct. 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 reported that he resided in New Jersey from November 1980 until August 1986 and New York from August 1986 until March 1989. Similarly, at part #33, the applicant reported that he was self employed as a janitor in New Jersey from November 1980 until August 1986 and New York from August 1986 until March 1989.

The applicant's Form I-687^{*} application indicates that he continuously resided in the United States during the requisite period. However, the applicant has failed to corroborate this testimony with credible and probative evidence. The applicant submitted with his application a copy of his Brazilian marriage certificate, dated November 24, 1989, with certified English translation. **The applicant failed to provide any additional evidence of his eligibility for temporary resident status.**

On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility

for temporary resident status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) delineates an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted an unsigned letter attesting to his eligibility for temporary resident status under the Newman Settlement Agreement. However, this letter alone is not probative and credible evidence of the applicant’s residence in the United States during the requisite period. An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet this burden of proof, an applicant must provide evidence of eligibility apart from his own testimony.

The director denied the application for temporary residence on June 21, 2006. In denying the application, the director noted that the applicant failed to provide any documentation corroborating his residence in the United States during the requisite period. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that the applicant had failed to meet his burden of proof in the proceeding.

On appeal, the applicant furnishes two statements entitled, “Declaration in Connection with Legalization Application.” These statements contain some type of a foreign stamp, possibly a notary stamp. These statements, signed by [REDACTED] and [REDACTED], provide, in part:

I believe I am a [sic] prima facie eligible for legalization in accordance with the Immigration Reform and Control Act of 1986 (IRCA), 8 USC, 1255 a [sic] and USCIS “Agreement” of 2/18/2004 and I am applying for classification . . . I did not apply for legalization before the deadline because I was discouraged by a Immigration and Naturalization Representative . . .

The applicant’s Form I-687 application indicates that [REDACTED] and [REDACTED] are his parents. The statements from [REDACTED] and [REDACTED] do not lend any weight to the applicant’s claim of continuous residence in the United States during the requisite period. Neither of these letters provides any information on the applicant’s continuous residence in the United States during the requisite period. It should be noted that the applicant, whose date of birth is April 29, 1962, was an adult during the original legalization application period. There is

no indication in these letters of the applicant's individual eligibility for temporary resident status. Accordingly, the assertions in these letters are irrelevant to this proceeding.

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). The applicant has failed to provide any probative and credible evidence of his residency in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide any documentary evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). Pursuant to *Matter of E-M-*, the applicant has not submitted sufficient evidence to establish that his claim is "probably true" under the preponderance of the evidence standard.

In conclusion, 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 lack of credible supporting documentation, it is concluded that 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.