



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: JAN 04 2008

MSC-05-174-11112

IN RE:

Applicant:



APPLICATION:

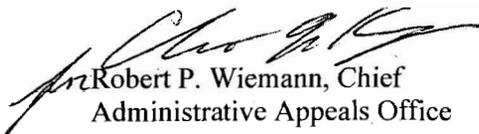
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be dismissed.

The director found that the applicant had failed to prove by a preponderance of the evidence that he resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. The director stated that, given the paucity of evidence in the record, the applicant appears not to qualify for temporary resident status. It is noted that the director raised the issue of Class Membership eligibility. Specifically, the director listed the requirement for Class Membership that the applicant must have been turned away by the Immigration and Naturalization Service because of having traveled outside the United States after November 6, 1986 and prior to May 4, 1988. The director noted that the applicant stated in his interview with an immigration officer that he has never been outside the United States and stated on his I-687 application that he traveled after the requisite period. Since the director evaluated the application on the merits, she is found not to have denied the application for class membership.

On appeal, the applicant stated that his only absence from the United States was a trip to Mexico in 2001. The applicant provided no additional documentation on appeal.

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.* 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 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 March 23, 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 showed his only address during the requisite period to be [REDACTED] Bronx, New York from 1981 to 2001.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents. Six documents relate to this period.

The applicant provided two declarations from [REDACTED]. In the first declaration, Mr. [REDACTED] stated that he met the applicant on April 20, 1981, when he was introduced to the applicant by the applicant’s uncle. This declaration does not confirm the applicant resided in the United States during the requisite period.

The second declaration from Mr. [REDACTED] states that the declarant has known the applicant since 1981. This declaration also fails to confirm the applicant resided in the United States during the requisite period.

The applicant submitted two declarations from [REDACTED]. The first declaration states that Mr. [REDACTED] met the applicant in 1984. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The second declaration from Mr. [REDACTED] states that the declarant came to the United States in 1984 and has known the applicant since then. The declarant stated, "according to my friend she was in the United States since 1981 and before 1981 at that time he told me that [the applicant] was here in the United States since 1981." This declaration also fails to confirm the applicant resided in the United States throughout the requisite period, because the declarant admitted his knowledge of the applicant's date of entry into the United States is based on second-hand information provided by a friend.

The applicant also submitted an envelope and letter dated February 28, 1985. The letter is addressed to the applicant at [REDACTED], Bronx, New York. This address is inconsistent with the information listed on Form I-687 indicating the applicant lived at [REDACTED] instead of [REDACTED], during the requisite period. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

In response to a Notice of Intent to Deny issued April 5, 2006, the applicant provided an envelope containing a postal cancellation stamp indicating it was mailed in 1981. The envelope lists the applicant's address as [REDACTED], New York. This address is inconsistent with the information listed on Form I-687 indicating the applicant lived at [REDACTED], instead of [REDACTED], during the requisite period. This inconsistency calls into question whether the applicant actually resided in the United States during the requisite period.

In denying the application the director found that the applicant had failed to prove by a preponderance of the evidence that he resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section.

On appeal, the applicant stated that his only absence from the United States was a trip to Mexico in 2001. The applicant provided no additional documentation on appeal.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period that is inconsistent with the information he provided on Form I-687. The applicant has submitted declarations from two individuals that fail to specifically confirm the applicant resided in the United States throughout the requisite period. Specifically, the declarations from Mr. [REDACTED] and [REDACTED] all fail to confirm the applicant resided in the United States throughout 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 information in the Form I-687 application and the documents submitted by the applicant, and given the applicant's 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.