



U.S. Citizenship
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Services

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FILE:

MSC-05-194-16009

Office: NEW YORK

Date:

JAN 09 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:

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. 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, on April 12, 2005. The director determined that the applicant had failed to establish that he had entered the United States before January 1, 1982; had resided continuously in the United States in an unlawful status since that date through May 4, 1988; and was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988. The director denied the application as 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.

The director also noted in his decision that the applicant had submitted affidavits that were not credible and were not amenable to verification.

On appeal, the applicant claims that he has submitted credible and convincing evidence sufficient to support his application for Temporary Resident Status.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement, paragraph 11 at page 6 and the 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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6).

The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 provided sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

The applicant submitted copies of his utility bills for 2006, which is subsequent to the requisite period and therefore, cannot be used to establish his eligibility.

The applicant submitted the following attestations in an effort to establish his eligibility for temporary resident status:

- A letter from a representative of Bronx-Lebanon Hospital Center in Bronx, New York, in which he stated that the applicant was first brought to the hospital center in March of 1983 by his mother in order to receive shots against DTP, malaria, and that he also suffered from back pain at that time. The representative also stated that the records showed the applicant came to the hospital center in June of 1985, October of 1986, and January of 1988 in order to receive other shots. Here, there is no evidence to demonstrate that the representative knew the applicant prior to January 1, 1982. The sporadic office visits are insufficient to demonstrate the applicant's continuous residence and continuous physical presence during the requisite period. The representative's name is illegible so the Service cannot contact the letter's author to verify its contents. Because this letter is lacking in detail and probative value and because it is not amenable to verification, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter from [REDACTED] of the Pan African Islamic Society in which he stated that the applicant has studied the Koran at the Madrass Mosque located at [REDACTED], New York, New York, from 1985 through 1987, and that he was a serious, devoted, and avid student. Here, there is no evidence to demonstrate that the representative knew the applicant prior to January 1, 1982. The statement made by the representative is inconsistent with the applicant's statement on Form I-687, at part #31 where he indicated that he had no affiliations or associations with any churches, clubs, or organizations. This inconsistency calls into question the representative's ability to confirm that the applicant resided in the United States during the requisite period. Because this letter contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period and it lacks sufficient details of his relationship with the applicant. Because the statement conflicts with other evidence in the record, and because it does not attest to the applicant's presence in the United States prior to January 1, 1982, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since May 14, 1982, and that he met the applicant through a mutual acquaintance at an African art gallery. He further stated that although he could attest to knowing the applicant back in the 1980's, he couldn't vouch that the applicant came to the United States in 1981. The affiant has submitted and the AAO recognizes a copy of his cancelled passport from the United States dated November of 1994. Here, there is no evidence to demonstrate that Mr.

knew the applicant prior to January 1, 1982. There is no evidence that the affiant himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted as evidence a letter from [REDACTED] in which he stated that he had known the applicant since 1998 and that the applicant had been his tenant in New York since that time. The applicant submitted a letter from a representative of Dunkin Donuts in which he stated that the applicant had been employed by the store since December 27, 2005. Here, there is no evidence to demonstrate that the letter writers knew the applicant prior to January 1, 1982, or during the requisite period. Therefore, the statements lack probative value and cannot be accorded any weight in establishing the applicant's claim of eligibility for temporary residence status.

In denying the application the director determined that the applicant had failed to meet 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 states that he submitted credible and convincing evidence to support his I687 application, and that the affidavits he submitted are credible and amenable to verification. The applicant resubmits his affidavits dated April and November of 2005, along with the [REDACTED] affidavit. In the April 2005, affidavit the applicant stated that he came with his mother to the United States in October of 1980, that his authorized stay expired before January 1, 1982, and that he was turned away at the INS New York States office when he attempted to apply for the 1986 amnesty program in September of 1987. In the applicant's November 2005 affidavit, he stated that he first entered the United States in October of 1980, resided continuously in an unlawful status from October of 1980 to September of 1987, and that he was unable to provide any additional documentation attesting to his initial entry into the country because of his undocumented status at that time.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States for the requisite period. Further, the applicant submitted one affidavit in which the affiant's name is illegible. He submitted another affidavit that is inconsistent with information provided by the applicant on his Form I-687 application. None of the affiants indicate first-hand knowledge of the applicant's continuous residence in the United States throughout the entire requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence or continuous physical presence for the entire requisite period 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 absence of credible supporting documentation, it is concluded that the applicant has failed to meet

his burden of proof and has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.