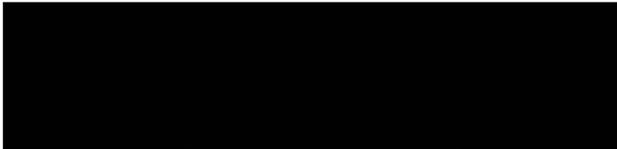


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FILE:

MSC 05 215 11880

Office: LOS ANGELES

Date:

JAN 18 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.

A handwritten signature in black ink, appearing to read "D. Wiemann".

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, Los Angeles, and 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. More specifically, the director found that the applicant provided inconsistent information with regard to his initial entry into the United States, which led to the finding that the applicant's claim lacks credibility. As such, 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 has lived in the United States since prior to January 1, 1982 and submits a brief in support of his claim.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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 during the requisite time period. The record shows that, although the applicant submitted voluminous documentation to establish residence in the United States, most of the documentation does not address the relevant statutory time period. The only documentation on record that does address the relevant time period includes the following:

1. An affidavit dated February 12, 2003 from [REDACTED] attesting to the applicant's residence in the United States since April 1986. As the affiant provided no information regarding her contact with the applicant during their purported friendship, it is unclear whether she actually saw the applicant during the relevant time period. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
2. An affidavit dated February 12, 2003 from [REDACTED] attesting to the applicant's residence in the United States since December 1978. The affiant claimed that the applicant lived in Shafter, California from December 1978 to July 1999. Although the affiant stated that he and the applicant worked together, he failed to provide the name of the purported employer or the dates of employment. It is further noted that the information offered by this affiant is inconsistent with the applicant's own claim in that the applicant did not claim to have commenced residing in the United States until 1981 and did not claim that any portion of his residence took place in Shafter, California. Therefore, this affiant's statement cannot be accorded any weight as evidence in support of the applicant's past residence in the United States during the requisite period.
3. An affidavit dated February 12, 2003 from [REDACTED], the applicant's brother, attesting to the applicant's residence in the United States since December 1987.

The only information offered by the affiant regarding the applicant's residence in the United States since 1987 is the city and state of residence.

Lastly, the applicant provided an employment letter dated March 21, 2005 from [REDACTED] a farm labor contractor, who claimed that he employed the applicant for 105 days during the one-year time period from May 1, 1985 to May 1, 1986. However, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, while [REDACTED] addressed the issue of employment records by stating that the employment records were destroyed, he did not provide the applicant's address at the time of the claimed employment. Additionally, [REDACTED] failed to explain how he was able to remember the exact date of the applicant's employment, which purportedly took place ten years prior to his sworn statement, if the employment records were destroyed. Therefore, the basis for [REDACTED] statements is questionable.

On August 8, 2006, the applicant appeared for an interview with a legalization officer. Pursuant to a thorough review of the record as well as a review of the information provided by the applicant during the interview, the director determined that the applicant's claim lacked credibility. Accordingly, the director issued a denial of the application in a decision dated August 9, 2006. The director noted the numerous inconsistencies between the applicant's initial claim and information provided at his legalization interview, his asylum application (Form I-589), his Application for Cancellation of Removal and Adjustment of Status (EOIR-42B), Immigrant Petition for Alien Worker (Form I-140), and Application for Alien Employment Certification (ETA 750).¹ Specifically, the director properly pointed out that in all four of the latter applications and/or petitions, the applicant stated that he first entered the United States in January 1989, which contradicts the response provided by the applicant in the legalization interview where he claimed that he first entered the United States for residence on December 10, 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director further noted that the applicant would have been approximately eleven years old at the time of his initial entry into the United States and, therefore would have been of school age. The director deemed questionable, therefore, the applicant's inability to provide any school or immunization records as evidence of his residence in the United States during a significant portion of the relevant time period.

On appeal, the applicant provides a confusing statement, where, instead of reconciling the inconsistencies discussed above, the applicant introduces new facts, which are unsupported by documentary evidence and

¹ It is noted that the director referred to Form I-140 as an employment certification application. This reference is erroneous as the Form I-140 is a separate petition for employment while ETA 750 is the application for employment certification. This error is merely noted for the record and is meant to clarify the director's incorrect reference.

further detract from the applicant's already questionable credibility. More specifically, the applicant now states that he entered the United States on September 10, 1981 while providing no explanation for having previously claimed a December 10, 1981 entry. The applicant further claims that he worked for [REDACTED] the farm labor contractor named above, from November 1981 to December 1988. Again, the applicant provides no explanation for [REDACTED]'s prior sworn statement where [REDACTED] claimed that the applicant worked for him from May 1, 1985 to May 1, 1986. Although the applicant reiterates the dates of absence previously claimed in No. 32 of the Form I-687, this information remains inconsistent with No. 16 of the applicant where the applicant stated that his last entry into the United States was on April 13, 1985.

With the regard to the lack of school and immunization records, the applicant states that he has worked since he first entered the United States out of financial need. While this explanation may account for the lack of certain contemporaneous records, it does not dispose of the countless anomalies discussed above. In summary, the applicant's inability to produce contemporaneous evidence of residence in the United States relating to the 1981-88 period would not necessarily undermine the applicant's claim. However, in the present matter, the applicant's record is fraught with inconsistencies, which remain unresolved with the necessary evidence. 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 contradictory statements on his applications and his 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 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*, 20 I&N Dec. 77. 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.