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

PUBLIC COPY

L1

FILE:

MSC-05-225-10833

Office: LOS ANGELES

Date:

JAN 29 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 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. 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 asserts his claim of eligibility for temporary residence status and submits a copy of a receipt for a California identification Card application fee, dated October 3, 1980.

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 May 13, 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 listed his addresses in the United States to be _____ Pacoima, California, from 1980 to 1981; _____ North Hills, California, from 1981 to 1983; _____ Pacoima, California, from 1983 to 1986; and _____ Pacoima, California, from 1986 to 1994.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided as evidence copies of postmarked envelopes bearing the applicant's name and a United States Post Office Box address in California. The three envelopes were dated 1985, 1986, and 1987, respectively. The applicant also submitted copies of his California Driver License issued October 31, 1985, and a receipt for registered mail dated May 24, 1985.

The applicant also submitted the following attestations:

- An affidavit dated March 31, 2005, from _____ in which he stated that the applicant was his brother, and that the applicant had resided with him from 1981 to the present. The affiant indicated that he resides at _____, Panorama City.

- An affidavit dated March 30, 2005, from [REDACTED] in which he stated that the applicant was his brother, and that the applicant had resided with him from 1981 to the present.
- An affidavit dated March 26, 2005, from [REDACTED] in which he stated that the applicant was his brother, and that the applicant had resided with him at [REDACTED] Pacoima, California, from early 1981 to 1985; and at [REDACTED] Pacoima, California, from 1985 to 1990. Here, the affiant's statement is inconsistent with the applicant's statement on his Form I-687, at part #30 where he listed his addresses to be [REDACTED] North Hills, California, from 1981 to 1983; [REDACTED] Pacoima, California, from 1983 to 1986; and 7335 [REDACTED] Pacoima, California, from 1986 to 1994. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period
- A declaration dated May 6, 2005, from [REDACTED] in which he stated that the applicant was his brother, and that the applicant has been in the United States since 1981. He also stated that he would speak to his brother regularly by phone, and that he would visit with him. Although the declarant attested to the applicant's residence in the United States since 1981, he failed to specify the frequency with which he communicated with the applicant. Here, the declarant has not provided evidence that he himself was present in the United States during the requisite period. Because this attestation is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since September of 1980, and that they and the applicant resided in the same apartment building at [REDACTED], Pacoima, California. They also stated that they became good friends with the applicant, that [REDACTED] and the applicant worked together, and that they continue to visit one another. Here, the affiants failed to specify the duration of the applicant's residence at the apartment complex. They also failed to specify the frequency with which they communicated with the applicant. The affiants have not provided evidence that they themselves were present in the United States during the requisite period. Because these affidavits are significantly lacking in detail they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted copies of postmarked envelopes dated Marc 29, 1982 and July 11, 1986, which lists the applicant as the sender.

In denying the application the director noted that there were numerous inconsistencies found in and among the applicant's I-687 application, the affidavits submitted by the applicant, and the applicant's testimony taken under oath, that rendered the statements and evidence not credible.

On appeal, the applicant attempts to explain the inconsistencies by stating that he was nervous during his interview and did not think before responding to questions with the wrong dates. The applicant submits as evidence of residence a copy of a receipt for the applicant's California Identification Card dated October 3, 1980. The applicant also resubmits copies of the attestations noted above.

Regarding residence in the United States during the requisite period, the record contains an affidavit from his brother [REDACTED], that is in conflict with what the applicant testified to during his interview with immigration officials and what is showed on his Form I-687, and therefore, doubt is cast on the assertions made. Given the inconsistencies, the statements are neither probative nor credible. Neither [REDACTED] nor [REDACTED] specify in their affidavits the length of time the applicant resided at the [REDACTED] address, hence their attestations cannot be afforded sufficient weight to substantiate the applicant's claim of residence in the United States in an unlawful status since January 1, 1982, and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The record lacks any document that might lend credibility to the applicant's claim of residence in the United States for the required time period.

Although the evidence indicates that the applicant was in the United States in 1980 and after 1985, the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence 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 paucity of credible supporting documentation and the applicant's reliance upon affidavits containing conflicting information and minimal probative value, it is concluded that he has failed to meet his burden of proof and 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. Portions of the decision, noted *supra*, will be withdrawn. The appeal will be dismissed.

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