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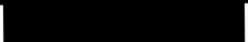
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK

Date: JUL 01 2008

MSC 06-041-10776

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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

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, Newark. 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 noted the numerous discrepancies contained in the applicant's statements made on his immigration applications and during his interviews with immigration officers. 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, counsel attempts to explain the many discrepancies found in the record of proceeding and asserts that the applicant is eligible for temporary resident status.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

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).

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) 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. See 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 10, 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 address to be [REDACTED] Atlantic City, New Jersey, from July of 1981 to December of 1989. Similarly, at part #33, the applicant indicated that his first employment in the United States was as a general helper at various jobs in Atlantic City, New Jersey, from July of 1981 to February of 1982; and as an assistant at the Neena Boutique in Atlantic City, New Jersey, from February of 1982 to December of 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following evidence:

- An affidavit dated January 6, 2002 from [REDACTED] in which he stated that he met the applicant in 1982 through a mutual friend of his family. He also stated that he lost contact with the applicant for a while but was able to re-establish his friendship with him at a later date. Here, the affiant fails to specify when in 1982 he met the applicant. He fails to identify the mutual friend through whom he met the applicant. The affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit 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.
- An affidavit dated February 26, 2002 from [REDACTED] in which he stated that the applicant is a close friend and that the applicant resided at [REDACTED], Atlantic City, New Jersey, from December of 1981 to December of 1989. This statement is inconsistent with what the applicant stated on his Form I-687 application at part #30 where he stated that he resided at the above address from July of 1981. 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 declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the attestation. It is also noted that the affiant stated in his affidavit listed above, that he lost contact with the applicant during the requisite period. Because this affidavit conflicts with other evidence in the record, it can be accorded only minimal weight in establishing that the applicant resided in the United States since prior to January 1, 1982.
- An undated affidavit from [REDACTED] in which he stated that he has known the applicant since 1986. Here, the affiant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982.
- An affidavit from [REDACTED] in which he stated that he is a United States citizen and that he has known the applicant since January of 1982, and that he has kept in touch with the applicant since they met. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982.
- A declaration from [REDACTED], M.D. in which he stated that the applicant has been under his care and for treatment of diabetes since June of 1985. He also stated that the applicant has been seen at his office at intervals of 3 to 6 months to treat his medical condition. Although this declaration may be some evidence of the applicant's presence in the United States since 1985, it

fails to support the applicant's claim of continuous unlawful residence since before January 1, 1982.

- A letter from a representative of the Manhattan Cleaners and Tailors in which he stated that the applicant was working as a casual laborer for the cleaners from 1981 to 1990. Here, the declaration does not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarant does not specify the frequency with which the applicant was employed nor does he specify the places of residence where the applicant resided throughout the claimed employment period. The declarant fails to state whether or not the information he provided was taken from official company records. Because the affidavit is not in compliance with regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which he stated that he met the applicant in January of 1982 while attending a funeral in Egg Harbor City, New Jersey, and that he saw the applicant at other times as well. Here, the affiant fails to specify the nature of his relationship with the applicant. He also fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, it can be give little weight.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since December of 1981 and that he first met the applicant in Egg Harbor City. He also stated that the applicant has shopped at Etr. Family Market, Inc., the store where he worked, and that he has helped him with small jobs from time to time. The affiant fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. There is no evidence in the record to show that the applicant was ever employed at the Etr. Family Market. Because this affidavit conflicts with other evidence in the record and is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated July 5, 2002 from Reverend [REDACTED] of Guardian Angel Church in which he stated that the applicant has been a faithful worshiper since approximately 1985. The declarant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations or associations, clubs, organizations, churches, unions, or businesses, and the applicant did not list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period, as claimed. In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- A letter dated January 7, 2003 from [REDACTED] in which she stated that she has known the applicant for the past 15 years and that she met him in North Jersey, and again in Atlantic City. She further stated that the applicant has been her neighbor, friend, and former co-worker in Atlantic City. **Here, the declaration lacks specificity. The declarant fails to identify the applicant's address or the place where she and the applicant were employed as co-workers. The declarant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. It is further noted that the applicant fails to the date that she first met the applicant. Because this letter is lacking in detail, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.**

The director issued a Notice of Intent to Deny (NOID) dated June 14, 2006. The director noted in the NOID the numerous inconsistencies that appeared in the record concerning the applicant's initial entry into the United States, the applicant's employment history, his absences from the United States including: the conception and birth of his children in India and the issuance of the applicant's Indian passport in India.

In response to the NOID, counsel asserts that the minor discrepancies and inconsistencies found in the record of proceeding are irrelevant or misconstrued, and are rebutted by solid evidence that demonstrates the applicant's continuous physical presence in the United States. He submits no evidence to support his claim.

In denying the application, the director determined that counsel did not adequately address all the issues and concerns regarding the multiple inconsistencies contained in the applicant's record. He also determined that counsel had failed, although it was specifically requested in the NOID, to provide independent objective evidence of the applicant's claim of eligibility for temporary resident status.

On appeal, counsel reiterates his assertions made in response to the NOID, and claims that the issues of fraud and waiver were inappropriately raised for the first time in the director's denial and violates the applicant's due process rights. Neither counsel nor the applicant submits any evidence on appeal.

In the instant case, the applicant has failed to meet his burden of proof. He has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. He has failed to overcome the grounds for the director's denial. Although counsel asserts that the fraud and waiver issues were never mentioned, and that the multiple inconsistencies found in the record are irrelevant or minor, there has been no independent corroborating documentation presented to substantiate such claims. Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant initial arrival in the United States and his continuous unlawful residence thereafter, his eligibility for temporary residence status cannot be established. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The multiple discrepancies left unexplained by counsel and/or the applicant, calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. For example, on his Form I-687, the applicant indicated that he first entered the United States on a B-2 nonimmigrant visa on July 11, 1981. In a sworn statement dated February 17, 1993, the applicant stated that he initially entered the United States illegally. 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, 591-92 (BIA 1988).

The absence of sufficiently detailed 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 applicant's contradictory statements 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 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.