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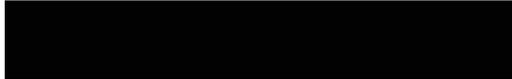
MSC-04-316-10029

Office: PHILADELPHIA

Date: JUL 03 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. 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.

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, Philadelphia. 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 August 5, 2004 (together, the I-687 Application). 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, specifically noting that the information and documentation “submitted are insufficient to overcome the grounds for denial.” 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.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a statement. On appeal, the applicant stated that “the information and documentation submitted are sufficient to overcome the grounds for denial.” The applicant also stated that because he did not know that documentation would be “required as proof of his] eligibility for residency in the U.S.A.,” he did not maintain records and the documents have been “lost.” The applicant adds that “whenever any of those records are available I will definitely bring [them] to your notice.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 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 furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on August 5, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] Brooklyn, New York, from February 1981 to August 1986. At part #33, he listed his first employment in the United States as a worker for J. B. Construction Corp., Inc. from March 1981 to October 1986. At part #32, the applicant lists three absences from the United States, one of which is written in red ink and appears to have been added during the applicant's interview. The applicant visited India from May 5, 1982 to June 5, 1982 and from March 1989 to April 1989. The applicant also visited Mexico from May 1987 to June 1987.

The applicant has provided three affidavits; three employment letters; a notarized letter; a copy of a New York Police Department Incident Information Slip dated January 14, 1991; a copy of the applicant's declaration of domicile dated July 10, 1991; a copy of the applicant's Form I-94 with an illegible date of entry, but indicating that the applicant was admitted into the United States as a visitor until April 25, 1989; a copy of a U.S. Postal Service money order; a copy of a New & Used Furniture receipt dated May 10, 1982; a copy of an optometrist receipt dated June 2, 1982; a copy of the applicant's passport; a copy of the applicant's daughter's birth certificate; and a copy of the applicant's marriage certificate. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. The record includes the pending I-687 Application as well as a prior Form I-687, dated July 12, 1991, which was submitted in support of the applicant's class member application in a legalization class-action lawsuit.

Some of the evidence submitted indicates that the applicant resided in the United States after April 1989 and is not probative of residence before that date. The following evidence relates both to the requisite period and to subsequent years:

- A notarized letter from [REDACTED] dated October 17, 1991, but notarized on June 3, 1991. The declarant states that he lives in Brooklyn, New York and confirms that the applicant lived with him at [REDACTED], Brooklyn, New York from September 1986 to May 1990. The declarant states that the applicant "shared the rent and all utility bills including food and lodging." Although the declarant states that he lived with the applicant from September 1986 to May 1990, the statement does not supply enough details to lend credibility to an almost four-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1986, and provides no information about the applicant's activities, during the referenced timeframe, that would demonstrate the extent of the declarant's contact and interactions with the applicant. In addition, the AAO notes that although the declarant's statement is dated October 17, 1991, it was notarized on June 3, 1991, more than four months before it was written. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in

support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized letter from [REDACTED] dated June 25, 2006. The declarant states that he lives in Brooklyn, New York and confirms that the applicant lived with him at [REDACTED], Brooklyn, New York from September 1986 to May 1990. The declarant states that the applicant “shared the rent and all utility bills, including food and lodging.” Although the declarant states that he lived with the applicant from September 1986 to May 1990, the statement does not supply enough details to lend credibility to an almost four-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1986, and the declarant does not provide information generated by his asserted association with the applicant that would demonstrate the extent of their contact during the referenced timeframes. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized “Witness Affidavit” from [REDACTED] dated October 18, 1991. The declarant states that he lives in Brooklyn, New York and that he has been acquainted with the applicant since February 1981. He states that he “originally met [the applicant] in a friend’s house” and that he lived with the applicant at [REDACTED], Brooklyn, New York from February 1981 to August 1986. The declarant also states that the applicant paid a share of the monthly rent and utility bills. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Further, the declarant provides no details indicative of the extent of his interaction with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized employment letter from Par Travels, Inc. dated August 26, 2006 and signed by [REDACTED], proprietor. Mr. [REDACTED] states that the applicant worked as a “courier service person on consignment basis from November 1984 to June 1986.” Mr. [REDACTED] adds that the applicant worked “20 to 30 hours in a week” and that his hourly was “\$4.50 paid in cash.” Although the statement is on company letterhead and notarized, the letter

fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records. If records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted if signed, attested to by the employer under penalty of perjury, and stating the employer's willingness to come forward and give testimony if requested. Furthermore, the AAO notes that the applicant did not list Par Travels, Inc. as an employer on the Form I-687. The statement from Mr. [REDACTED] does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

A notarized employment letter from [REDACTED] Contracting Company dated October 22, 1991 and signed by [REDACTED], president. Mr. [REDACTED] states that the applicant worked as a "construction worker from October 1986 to April 1990." [REDACTED] adds that because the applicant "did not have a social security number at that time, he was paid in cash." Although the statement is on company letterhead and notarized, the letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records. If records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted if signed, attested to by the employer under penalty of perjury, and stating the employer's willingness to come forward and give testimony if requested. The statement from [REDACTED] does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

A notarized employment letter from J. B. Construction Corp., Inc. dated October 22, 1991 and signed by [REDACTED]. The AAO notes that the letter does not provide a title or a position for [REDACTED]. Mr. [REDACTED] states that the applicant worked as a "construction worker from March 1981 to September 1986." Mr. [REDACTED] adds that the applicant worked 40 hours a week and was paid \$200 per week in "cash." Although the statement is on company letterhead and notarized, the letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which is discussed above. As the statement from [REDACTED] does not include much of the required information, it can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- A notarized "Affidavit for Residence" from [REDACTED] dated October 21, 1991. The declarant states that he lives in Miami, Florida and that he is the "lease of the

real property located at [REDACTED], Miami, Florida.” The declarant states that the applicant has been living at this address since June 1990 and pays \$150 per month for rent. The record of proceeding includes a copy of the declarant’s lease for the property mentioned in the affidavit. However, the relevant period for this application is from January 1, 1982 to May 4, 1988 and the declarant’s affidavit encompasses a time period after the relevant period. This affidavit has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A copy of a U.S. Postal Service money order from the applicant to Bank of Baroda with a handwritten date of June 1, 1983. In his denial, the director pointed out that the money order includes a pre-stamped date. The pre-stamped date on the money order is September 25, 1995. Doubt cast on any aspect of the applicant’s proof may 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 applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given the material discrepancy as to its date, this document has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A copy of a receipt from New & Used Furniture dated May 10, 1982 and a copy of a receipt from [REDACTED] dated June 12, 1982. Both receipts include the applicant’s name and an address listed on the Form I-687. Although receipts for services and purchases may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States on January 21, 1981 with a visitor’s visa. The applicant states that he arrived in New York. However, the record of proceeding contains no evidence of the applicant’s entry into the United States. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on March 21, 2006. The director denied the application for temporary residence on September 21, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence

requirements. In addition, the director noted that the applicant submitted a U.S. Postal Service money order with a handwritten date inconsistent with the pre-stamped date on the money order. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant stated that “the information and documentation submitted are sufficient to overcome the grounds for denial.” The applicant also stated that because he did not know that documentation would be “required as proof of his] eligibility for residency in the U.S.A.,” he did not maintain records and the documents have been “lost.” The applicant did not address the director’s statements regarding the inconsistent dates on the money order.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the requisite period seriously detracts from the credibility of his claim. There are numerous discrepancies in the evidence submitted by the applicant. 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period, 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.

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