



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-033-13273

Office: CHARLOTTE

Date: JUL 03 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. 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 "R. 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, Atlanta. 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. Specifically, the director noted that the applicant had submitted a labor certification application that directly contradicted his claim to have resided in the United States continuously throughout the requisite period.

On appeal, the applicant stated that the director's decision was based on materials that had been expunged from the application; the amendments to the application were not considered; the evidence was not tested to disprove their dates of acquisition and issuance; the labor certification application was withdrawn and, therefore, its contents should not have been considered; and the interviewing officer intimidated and harassed the applicant during the interview.

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 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 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 2, 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 the following addresses during the requisite period: [REDACTED], Newport, Rhode Island from June 1979 to June 1983; and [REDACTED], Wilson, North Carolina from July 1983 to May 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Temporary jobs with Manpower, Inc. of Providence from June 1979 to May 1983; and parts manager with Carolina Freight Carriers from July 1983 to March 1995.

The applicant provided three attestations in support of his claim to have resided in the United States throughout the requisite period. The declaration from [REDACTED] states that the

applicant was the declarant's coworker at Carolina Freight Company between 1983 and 1995. This declaration lacks detail regarding the nature of the applicant's employment, whether he was absent from the United States during the requisite period, and his frequency of contact with the declarant. Therefore, this declaration is given only limited weight in determining whether the applicant has established that he resided in the United States from 1983 until the end of the requisite period.

The applicant provided a witnessed declaration dated September 21, 2005 from [REDACTED] who identified herself as the applicant's sister. The declarant stated that the applicant has been living in the United States since 1979. The declarant stated that she knows this because the applicant was trying to help her go to school in the United States. This declaration fails to include detail regarding the region where the applicant resided during the requisite period, and the nature and frequency of the declarant's contact with the applicant. This lack of detail is particularly significant considering that the declarant is the applicant's sister and did not indicate that she was present in the United States during the requisite period. Therefore, this declaration is given only limited weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided another witnessed declaration dated September 18, 2005 from [REDACTED], who identified himself as the applicant's brother. The declarant stated that the applicant has been living in the United States since 1979. The declarant stated that he knows this because he regularly corresponded with the applicant during this period. The declarant also indicated that he was accommodated by the applicant during a visit to the United States in May and June of 1985. This declaration fails to include detail regarding the region where the applicant resided during the requisite period, and the specific nature and frequency of the declarant's contact with the applicant. This lack of detail is particularly significant considering that the declarant is the applicant's brother and indicated that he was present in the United States for a maximum of two months during the requisite period. Therefore, this declaration is given only limited weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant also provided several photographs in support of his application. The applicant is not clearly identifiable in the photographs, and they are undated. Therefore, the photographs will be given very little evidentiary weight.

As noted in the director's decision, the record contains a Form ETA 750 Application for Alien Employment Certification, Part B Statement of Qualifications of Alien (Form ETA 750B) signed by the applicant under penalty of perjury on February 28, 2005. At part #11 where the applicant was asked to list the names and addresses of universities attended, the applicant indicated that he attended Kenyatta University in Nairobi, Kenya from January 1987 to December 1987. At part #15C where the applicant was asked to list his work experience, the applicant indicated that he worked as a teacher for the Teachers Service Commission in high schools in Nairobi, Kenya from January 1984 to December 2000. This information indicates that the applicant was absent

from the United States from January 1984 through the end of the requisite period. As a result, this document casts serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The record also includes a copy of an academic transcript from Kenyatta University in Nairobi, Kenya. The transcript lists the applicant's name and lists courses completed by the applicant during the 1986/1987 academic year. This information indicates that the applicant was absent from the United States for at least one semester during 1986 and 1987. As a result, this document casts additional doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application the director noted 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, the director noted that the applicant had submitted a Form 750B that directly contradicted his claim to have resided in the United States continuously throughout the requisite period.

On appeal, the applicant stated that the director's decision was based on materials that had been expunged from the application; the amendments to the application were not considered; the evidence was not tested to disprove their dates of acquisition and issuance; the labor certification application was withdrawn and, therefore, its contents should not have been considered; and the interviewing officer intimidated and harassed the applicant during the interview.

In summary, the applicant has submitted attestations from only one individual who was present in the United States throughout the requisite period. The applicant submitted declarations from his brother and sister concerning that period, and photos that have minimal probative value. The record also contains statements and documents submitted by the applicant that directly contradict his claim of continuous residence throughout the requisite period. The absence of sufficiently detailed supporting 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 contradictions between the applicant's Form I-687 and his Form 750B and related documents, and given 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.