



U.S. Citizenship
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FILE:

MSC-05-256-11835

Office: LOS ANGELES

Date:

JUL 07 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. K. Wiemann", with a large loop at the end.

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 that he has established by a preponderance of the evidence that that he 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. In support of this claim he submits two additional affidavits.

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.* 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 June 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 showed his relevant addresses in the United States to be in Canyon Country, California, from 1981 to 1987, and in Newhall, California from 1987 until 1990. Similarly, at Part #33, he showed his first employment in the United States to be for [REDACTED], from 1981 to 1988.

In support of his application, the applicant submitted the numerous affidavits which are evaluated below:

- Declarations from [REDACTED] and [REDACTED] in which the declarants all stated that they have known the applicant since he came to the United States in 1981. Their statements are not notarized or accompanied by identification. All three lack any details that would lend credibility to their alleged relationship with the applicant. They do not indicate the circumstances in which they met the applicant or how they date their initial acquaintance. Finally, none of the declarants provide an address where the applicant resided in the United States, or describe the frequently of contact that they had with the applicant. Given these deficiencies, these statements have minimal probative value in supporting the applicant's claim that he entered the United States in 1981.

- Declarations from [REDACTED] and [REDACTED] who all stated that they have known the applicant since he began visiting their father's house in 1984. It is noted that none of the declarants stated how they date their acquaintance with the applicant, or whether they have direct, personal knowledge of the address at which he was residing during the critical time period between 1981 and 1988. The declarants' uniformly ambiguous references to seeing the applicant while he was visiting their father's home are not persuasive. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning 24 years. For these reasons, these have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.
- A declaration from [REDACTED] who claims to have met the applicant when he came to her home for a visit in 1985. Like the declarations referenced above, this declarant does not provide any relevant details that are probative of the applicant's continuous residence in the United States since a date prior to January 1, 1982. She does not state the address where the applicant resided nor does she indicate any personal knowledge of his continuous residency in the United States. Given the lack of detail, this declaration will be given minimal weight.
- Declarations from [REDACTED] and [REDACTED] who indicated that they met the applicant in 1985 at a basketball game. They did not indicate any other details which are relevant to this application. Their declarations will also be given minimal weight.
- A declaration from [REDACTED] who indicated that he has known the applicant since 1985 when he met him at "various soccer games." He did not provide any other relevant details that are probative of the applicant's continuous residence in the United States since a date prior to January 1, 1982. He did not state the address where the applicant resided nor did he indicate any personal knowledge of this applicant's continuous residency in the United States. Given the lack of detail, this declaration will be given minimal weight.
- A declaration from [REDACTED] Mr. [REDACTED] indicated that the applicant arrived in the United States in 1981 and that they would visit each other and talk on the telephone. He also indicated that he accompanied the applicant to the INS office in Los Angeles in December 1987 to apply for amnesty. He indicated that the applicant was turned away by the officer because the applicant had traveled outside the United States. While his declaration does provide some evidence of the applicant's class membership, it does not address the applicant's continuous residence in the United States since a date prior to January 1, 1982.
- An employment verification letter from the owner of Dryclean U.S.A. The statement is not on company letterhead nor is it notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides 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 which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by the owner does not include any of the required information and therefore can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- A declaration from [REDACTED] who stated that the applicant is her uncle and that she met him in California when she was a little girl. She did not state what year she met the applicant, how frequently she saw him, or that she has direct knowledge of his residency in the United States for the duration of the statutory period. Like the declarations referenced above, this declarant did not provide any relevant details that are probative of the applicant's continuous residence in the United States during the relevant period. She did not state the address where the applicant resided nor did she indicate any personal knowledge of his continuous residency in the United States. Given the lack of detail, this declaration will be given minimal weight.
- Finally, the applicant submitted a declaration from [REDACTED] who indicated that he met the applicant in 1987 "at a farm where I went to buy food for a party." He did not provide any further information and his declaration will be given no weight for the same reasons as stated above.

The director denied the application for temporary residence on July 29, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 and continuously resided in the United States for the duration of the statutory period is not credible.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but emphasizes that he was nervous during his interview with a CIS officer and may have confused some dates. In support of his claims, the applicant submits two additional affidavits:

- A declaration from [REDACTED] who claims that she met the applicant in 1981 when he "made frequent visits to my husband's house." It is noted that the declarant did not state how she dates her acquaintance with the applicant. The declarant's ambiguous references to seeing the applicant while he was visiting her husband's home are not persuasive. For these reasons, this declaration has very limited probative value as evidence of this applicant's continuous residence in the United States since a date prior to January 1, 1982.

- A declaration from [REDACTED]. Like the above declarant, [REDACTED] claims that she met the applicant in 1981 when he “made frequent visits to my sister’s house.” She provides no additional information that is probative of the applicant’s entry to the United States prior to January 1, 1982 or his continuous residency in the United States for the duration of the statutory period. This declaration will be given minimal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the declarant’s statements are significantly lacking in detail and do not establish that the declarants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, they are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 reliance upon affidavits 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-*, *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