



U.S. Citizenship  
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FILE: [Redacted]  
MSC-06-084-12560

Office: LOS ANGELES

Date: JUL 08 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.

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 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 application was initially denied as abandoned by the director because the applicant failed to appear for his interview. When the applicant furnished evidence that he requested his interview to be rescheduled, the director *sua sponte* reopened the 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. 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 requests that his application be reconsidered.

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 December 23, 2005. 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 showed his first address in the United States to be in Burbank, California from May 1981 until December 1988. At part #33 of the application, where applicants are asked to list their absences from the United States, the applicant responded that he traveled to India in August 1987. The applicant also showed that he was in India from December 1988 until August 2000. At part #33 of the application, where applicants are asked to list their employment in the United States, the applicant showed his first employment in the United States to be as a contract laborer. The applicant did not provide his employment location or the dates of employment for his position a contract laborer.

On January 31, 2006, the Director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to

establish his eligibility for temporary resident status. The applicant was afforded a period of 30 days to submit additional evidence in response to the NOID.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted affidavits from [REDACTED] and [REDACTED]

The affidavit from [REDACTED], dated February 11, 2006, in part, provides:

I have personally known and have been acquainted in the United States with [REDACTED] the applicant above mentioned; that to my knowledge the applicant has resided in the United States as follows [sic] since 1986 to 1987. I became acquainted with him during that year as I fell ill and he helped me by bringing food and supplies while I was hospitalized at Olive View Hospital. After that I lost contact with him because I moved to Palmdale.

This affidavit fails to provide any details regarding [REDACTED]'s relationship with the applicant. The affidavit does not state how [REDACTED] became acquainted with the applicant. In addition, the affidavit does not detail their relationship during the requisite period. Although the affidavit states that the applicant assisted [REDACTED] while she was hospitalized, it does not convey the duration of her hospitalization. The affidavit is ambiguous as to how frequently [REDACTED] had contact with the applicant from 1986 until 1987. Given the lack of detail in this affidavit, it is of little probative value as evidence of the applicant's continuous residence in the United States from 1986 until 1987.

The affidavit from [REDACTED], dated January 5, 2006, in part, provides:

I have known [REDACTED] personally, as a roommate from 1981 – 1987. I personally know that [REDACTED] had been living in the [U]nited [S]tates during the years of 1981-1988. I personally know the above said information [sic] he was living with me as a roommate during the year of 1981-1987. During the years 1981-1987 I had been residing at [REDACTED] Burbank-CA-91504, and during the same years from 1981-1987 [REDACTED] had been residing at 2306, [REDACTED] Burbank, CA-91504.

█'s assertion that he resided with the applicant from 1981 until 1987 at 2306 Ontario █, Burbank, California is inconsistent with other evidence in the record. On June 12, 2007, the director issued to the applicant a Form I-72, requesting proof of the affiants' residence in the United States between 1982 until 1986 and their phone numbers. In response to the Form I-72 the applicant submitted a letter from █, dated July 16, 2007. The letter contains █'s phone number and provides, "█ always gave money to me and I used to send money on my name to his relatives in India. Some old slips are attached." █ attached to this letter the following original receipts issued under his name: a Security Pacific National Bank international money order receipt, dated May 1, 1984; Bank of America receipts for cashier checks, dated July 14, 1981, May 10, 1982 and May 6, 1981; and a Bank of America international money order, dated January 23, 1985. Notably, the receipt from Security Pacific National Bank, dated May 1, 1984, and the receipt from Bank of America, dated May 10, 1982, show █'s address as █, Cerritos, California. These receipts seriously undermine the credibility of █'s assertion that he resided with the applicant from 1981 until 1987 at █, Burbank, California. Therefore, █'s affidavit is without any probative value and credibility as evidence of the applicant's continuous residence in the United States during the requisite period.

The Form I-72 also requested the applicant to submit a certified court disposition related to his arrest and additional proof of his residence in the United States from before 1982 through 1988. In response to this request the applicant furnished the following documents:

- Three original receipts, which the applicant indicates are his original proofs of purchase in 1985. These receipts are as follows:
  - Receipts from Zody's Jewelry Department, dated April 12, 1985 and January 26, 1986. These receipts do not bear the applicant's name or address. There is nothing on the receipts to link them to the applicant. Therefore, they are without any probative value as evidence of the applicant's residence in the United States during the requisite period.
  - A typed receipt, dated February 16, 1986. This receipt does not bear the applicant's name or address. Furthermore, the receipt does not show that it was issued in the United States. Accordingly, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A disposition from the Superior Court of California, County of Los Angeles, showing that on May 12, 2006, the applicant was convicted of *Selling Liquor to a Minor* in violation of section 25658(a) of the California Business and Professions Code. The punishment for a violation of this statute is a fine of \$1000 and 24 hours of community service. Cal. Bus. & Prof. § 25658(e)(2) (West 2006). The applicant was sentenced to 24 months probation and ordered to pay a fine of \$990.00. Pursuant 8 C.F.R. § 245a.1(o), a conviction for this offense is classified as a misdemeanor. Under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4),

an applicant must establish that he has not been convicted of any felony or three or more misdemeanors committed in the United States. Hence, this misdemeanor conviction does not make the applicant statutorily ineligible for temporary resident status under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

On October 12, 2007, the director issued a denial notice to the applicant. In denying the application, the director found that the applicant gave sworn testimony that he was absent from the United States from August 1987 until December 1988. The director determined that the applicant's absence from August 1987 until December 1988 exceeds 45 days and is in excess of 180 days. The director noted that 8 C.F.R. § 245a.15(c) provides that an alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded 45 days and the aggregate of all absences has not exceeded 180 days between January 1, 1982 and May 4, 1988. The director concluded that the applicant has failed to meet his burden of proof by a preponderance of the evidence that he resided in the United States for the requisite periods, and denied the application.

The director's overall decision, denying the application because the applicant failed to meet his burden of proof in the proceeding, was correct. However, the director applied the incorrect legal standard in his decision. The director erroneously cited to the Section 1104 of the Legal Immigration Family Equity (LIFE) Act regulations at 8 C.F.R. § 245a.15. This proceeding is instead under section 245A of the Act, 8 U.S.C. § 1255a.

Under section 245A of the Act, 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 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). Under the CSS/Newman Settlement Agreements, the term "until the date of filing" 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 record does not reveal the date the applicant attempted to file or was caused not to timely file a Form I-687 application during the original legalization application period. Consequently, the applicant's absence from the United States from August 1987 until December 1988 is not a basis for his ineligibility for temporary resident status. Therefore, this part of the decision is withdrawn. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that he will submit a brief within 30 calendar days. The applicant requests the AAO to reconsider his case. The applicant's Form I-694, Notice of Appeal, was filed on November 15, 2007. As of the date of this decision, the AAO has not received a brief or any additional evidence from the applicant.

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 applicant has submitted evidence, which, as discussed, either lacks considerable detail or is materially inconsistent. The applicant's assertion that he resided with [REDACTED] in Burbank, California during the requisite period is undermined by contemporaneous documentation showing that [REDACTED] in fact, resided in Cerritos, California during the same time period. The inconsistent evidence negates the applicant's own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability verification. 8 C.F.R. § 245a.2(d)(5). The applicant's failure to submit credible supporting documentation renders a finding that he has not satisfied his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and 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.