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U.S. Citizenship
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Services

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FILE: MSC-06-098-13697

Office: LOS ANGELES

Date: JUL 17 2008

IN RE: Applicant:



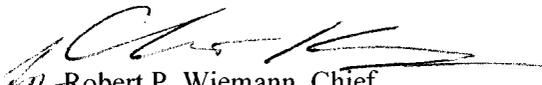
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 (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. The director also noted that the applicant's father adjusted to permanent resident status on August 25, 1988.

On appeal, counsel for the applicant asserted that the applicant and his witnesses' statements regarding his residence in the United States since 1981 have not been contradicted by any evidence; and the fact that the applicant's father adjusted to permanent resident status as a special agricultural worker only proved the applicant's claim to have been turned away when he and his father attempted to apply for the amnesty program. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership. Counsel also erroneously stated that Citizenship and Immigration Services (CIS) bears the burden of proving the insufficiency of submitted proof by clear, unequivocal, and convincing evidence. In this proceeding, in contrast to deportation proceedings, 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. 8 C.F.R. § 245a.2(d)(5).

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.

As noted above, 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 CIS on January 6, 2006. 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] Los Angeles, California from December 1981 to December 1984; and [REDACTED] Los Angeles, California from March 1986 to January 1993. The applicant failed to list a residence in the United States for the period of

January 1985 through February 1986. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following absence during the requisite period: A trip to the Philippines for school, from January 1985 to February 1986. It is noted that the applicant signed a record of sworn statement on October 31, 2006, which states that he left the United States in December of 1985 and went back to the United States in March of 1986. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, 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 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant indicated on Form I-687 that his visit to the Philippines spanned more than one year during the requisite period. He indicated in his sworn statement on October 31, 2006 that he was absent from December 1985 to March 1986 and, therefore, that his absence included the full months of January and February. Therefore, this absence must have exceeded 45 days. The applicant provided no explanation for the delay in his returning to the United States. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The declaration from [REDACTED] the applicant's mother, lists the applicant's addresses during the requisite period as listed on the Form I-687. The declarant stated that the applicant was brought to the United States by her husband, the applicant's father, in 1981 due to personal problems. She stated that the applicant was taken care of by relatives and good friends, and he stayed in the United States with his father from December 1981 to 1993. The declarant stated that she saw the applicant in 1985 in the Philippines and visited him in the United States. This declaration fails to include detail regarding the personal reasons that the applicant came to the United States, the names of the friends and relatives who cared for the applicant, the frequency and nature of the declarant's contact with the applicant while he was in the United States, the applicant's activities in the United States, and the reason he did not attend school while in the United States. Since the declarant is the applicant's mother, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period. This declaration fails to provide an address in the United States for the applicant from January 1985 through February 1986 and indicates that the applicant was in the Philippines for an unspecified period in 1985.

The applicant also provided an affidavit from his father, [REDACTED]. The affiant stated that he brought the applicant to the United States in December 1981, and the applicant was under the affiant's care with the help of relatives and friends. This affidavit fails to include detail regarding the names of the friends and relatives who cared for the applicant, the applicant's activities in the United States, the reason he did not attend school while in the United States, and the dates and reason for the applicant's absence from the United States during the requisite period. Since the

affiant is the applicant's father, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The applicant submitted an affidavit from [REDACTED], which states that the applicant came to the United States with his father in December 1981 and stayed briefly in the affiant's home at that time. This information appears to be inconsistent with the applicant's statements on his Form I-687 and the declaration from the applicant's mother and father, which failed to indicate that the applicant stayed with [REDACTED] after entering the United States. This inconsistency casts some doubt on the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. This affidavit also fails to provide detail regarding the region where the applicant resided in the United States, the frequency and nature of the affiant's contact with the applicant, and the length of the applicant's absence from the United States during the requisite period. Due to the inconsistency between this affidavit and other documents in the record, and due to its lack of detail, this affidavit will be given very little evidentiary weight.

The applicant submitted an affidavit from [REDACTED], which states that the applicant was brought to the United States by his father in 1981, spent the week of Christmas in the affiant's house, and stayed with relatives and friends in 1982. The declarant stated that, to his personal knowledge, the applicant stayed in the United States from 1981 to 1993 continuously except for a brief absence in 1985. The declarant also stated that the applicant and his father visited the declarant several times from 1981 to 1993. This information appears to be inconsistent with the applicant's statements on his Form I-687 and the declaration from the applicant's mother and father, which failed to indicate that the applicant stayed at the declarant's house at any time. This information is also inconsistent with the affidavit from [REDACTED] who indicated that the applicant stayed with him upon entering the United States rather than in 1982. These inconsistencies cast some doubt on the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. In addition, this affidavit fails to provide detail regarding the affiant's nature and frequency of contact with the applicant, the region where the applicant resided during the requisite period, and the length of his absence from the United States. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The applicant provided a notarized declaration from [REDACTED], which lists the applicant's addresses during the requisite period as listed on the Form I-687. This declaration fails to provide an address in the United States for the applicant from January 1985 through February 1986. Therefore, it tends to show that the applicant was absent from the United States for a period exceeding 45 days and, as a result, that he did not reside continuously in the United States throughout the requisite period. In addition, although the declarant stated that he had personal knowledge of the applicant's residences, the affiant stated that his knowledge of the applicant's residences is based on his knowledge of the applicant's father. The declarant failed to indicate whether he had any contact with the applicant during the requisite period. The declarant also failed to provide details regarding the applicant's absence from the United States during the requisite period. Therefore, the declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] which states that the applicant's father is the affiant's cousin. The affiant stated that the applicant resided in the United States continuously from 1981 to 1993, and that the affiant is in constant contact with the applicant because of the close affinity between their families. This affidavit fails to provide detail regarding the region where the applicant resided during the requisite period, the affiant's frequency of contact with the applicant, and the duration of the applicant's absence from the United States during the requisite period. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during 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.

On appeal, counsel for the applicant asserted that the applicant and his witnesses' statements regarding his residence in the United States since 1981 have not been contradicted by any evidence.

In summary, the applicant has submitted attestations that lack sufficient detail or conflict with each other or the Form I-687. In addition, the Form I-687, the applicant's sworn statement, and the attestations he submitted indicate that he was absent from the United States during the requisite period for a visit to the Philippines that exceeded 45 days. 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 the documents he submitted, his reliance upon documents with minimal probative value, and the evidence that the applicant was absent from the United States on a visit that exceeded 45 days during the requisite period, 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.