



U.S. Citizenship
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FILE: [Redacted] Office: NEW YORK Date: JUL 22 2008
MSC 05 25315557

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:
[Redacted]

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.

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, New York. 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 June 10, 2005. The applicant was interviewed on March 13, 2006 in connection with his Form I-687. On March 13, 2006, the director issued a Notice of Intent to Deny (NOID) the application and ultimately denied the application on July 19, 2006.

In the July 19, 2006 decision, the director determined that the applicant had submitted conflicting evidence regarding his 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 was filed or attempted to be filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). On appeal, the applicant claims that it is very difficult to obtain documents relating to his case. The applicant asserts that the affidavits submitted are probative and that he is eligible for the program.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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).

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).

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 establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the duration of the requisite period. Here the submitted evidence is not credible and thus is not probative.

On the Form I-687, the applicant listed his name as [REDACTED] and his date of birth as January 5, 1970. He indicated that upon entering the United States, he lived at [REDACTED] in Brooklyn New York from November 1981 to June 1984. He listed his employment as a vendor in New York City beginning in November 1981 to June 1995. The record also contains two affidavits:

- An affidavit dated December 15, 2005 signed by [REDACTED] who declares that he has known the applicant since August of 1981 and that he and the applicant play soccer together.
- An affidavit dated December 13, 2005 signed by [REDACTED] who declares that he has known the applicant since June 1981 and that he met the applicant where he was selling T-shirts, hats, and sunglasses.

In the applicant's March 13, 2006 interview, when asked when he came to the United States, the applicant stated that he did not come to the United States in the 1980s. The director, also on March 13, 2006, issued a NOID noting that the applicant's testimony and the affiants' declarations were inconsistent. In an April 2, 2006 response, the applicant indicated that he had arrived in the United States in late November 1981 and that he had left the United States to visit Nigeria in November 1987 to December 1987. The applicant does not otherwise address the information he provided in the interview and its inconsistency

with his subsequent testimony or the affiants' declarations that they met the applicant in June and August of 1981, some months prior to the November 1981 date the applicant indicated he entered the United States in the April 2, 2006 rebuttal. The applicant simply asserts that the affidavits are probative. The director denied the application on July 19, 2006 again noting the inconsistencies in the record regarding the applicant's entry into the United States.

On appeal, the applicant again contends the affidavits submitted are probative and that he is eligible for this program.

In this instance, the applicant has provided two affidavits that indicate the affiants met the applicant in June of 1981 and in August of 1981. The applicant, on the Form I-687 and on appeal states that he first entered the United States in late November 1981. Thus, the affiants could not have met the applicant in either June 1981 or August 1981 in the United States. The affidavits have no probative value as they are inconsistent with the applicant's statements regarding his entry into the United States. The AAO notes the further inconsistency in the applicant's own testimony regarding his entry into the United States at his March 13, 2006 interview and on the Form I-687, in his response to the director's NOID, and on appeal.

These deficient statements and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the applicant's own inconsistent testimony detracts 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 meet his burden of proof and 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. The appeal will be dismissed.

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