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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

LI



FILE:



MSC 06 091 14024

Office: LOS ANGELES

Date:

JUL 23 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. 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.

Handwritten signature of Robert P. Wiemann in black ink.

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, California. 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 December 30, 2005. The applicant was interviewed on September 28, 2006 in connection with his Form I-687. The director denied the application on November 6, 2006 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 submits a brief statement and provides copies of documents previously submitted.

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 evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on August 1, 2001. The applicant listed his addresses for the pertinent time period as: [REDACTED], Centralia, Illinois from 1979 to 1987; and [REDACTED], Lakewood, Washington from 1987 to 1989. The applicant listed his absences from the United States during the pertinent time period as: April 1987 to August 1987. The applicant's date of birth is listed on the Form I-687 as August 8, 1968.

In a September 25, 2006 sworn statement, the applicant declared: that he first entered the United States in 1981 through Toronto, Canada; that he stayed with his family in New Jersey until mid-1982; that he attended a private Catholic school while in New Jersey for his seventh grade year; that in mid-1982 he and his mother returned to the Philippines and he finished high school in the Philippines; that he returned to the United States in August 1984 with his mother; and that his parents went to the Immigration and Naturalization Service in January 1988 to apply [for legalization] but that they were turned away.

The applicant provided the following documents to establish his residence in the United States for the applicable time period:

- A September 20, 2006 affidavit signed by [REDACTED] who declares that he has known the applicant since childhood and that he knows that the applicant and his family migrated to the United States in 1981;
- A September 22, 2006 affidavit signed by [REDACTED] who declares that the applicant has been residing in the United States since 1981;
- A September 20, 2006 affidavit signed by [REDACTED] who declares: that he has known the applicant and his family since 1975, that the applicant and his family migrated to the United States in 1981, and that when the affiant and his family

- migrated to the United States in 1984, they met up with the applicant and his family again;
- A September 20, 2006 affidavit signed by [REDACTED] who declares that he first met the applicant at a social activity in Lakewood, Washington and has remained close friends with the applicant;
 - A September 19, 2006 affidavit signed by [REDACTED] who declares that from 1985 to 1987 (when the affiant was five years old) the applicant baby sat her and also ran errands for her family; and
 - A September 20, 2006 affidavit signed by [REDACTED] who declares that he met the applicant through a friend in Lakewood, Washington and has remained close friends with the applicant.

On appeal, the applicant contends that the director erred when finding conflict and contradictions in the information provided in support of the application. The applicant asserts that:

- From 1979 to 1981 the applicant and his parents visited the United States and stayed in Illinois for about seven months and that during this time the applicant attended elementary classes in Illinois;
- In June of 1981 the applicant's family decided to migrate to the United States, they traveled through Canada, and resided briefly in New Jersey where the applicant studied for one full school year in a private Catholic school in Jersey City;
- In mid-August 1982 the applicant and his mother returned to the Philippines where the applicant attended a private Catholic school to finish high school (tenth grade);
- In 1983-1984, the applicant and his mother visited his father from March to July in the United States;
- After the applicant's graduation from high school in March 1984, the applicant and his mother immediately left the Philippines and joined the applicant's father in Illinois; and,
- The applicant's parents tried to apply for naturalization in 1984 and 1987 but were unsuccessful.

In an interview with a Citizenship and Immigration Services (CIS) officer on September 26, 2006, the applicant verified that he had left the United States in September 1982 to April or May of 1984 to finish high school in the Philippines.

The AAO has reviewed the record in this matter and finds that the applicant has not established his continuous residence in the United States for the applicable time period. The affidavits in the record provide only general information regarding the applicant's residence in the United States for the pertinent time period. They do not provide details that demonstrate the extent of the affiants' contacts with the applicant. The affiants do not mention the applicant's absences from the United States. Some of the affidavits appear to be written by individuals who were not in the United States during the entire requisite period and so could not testify to the applicant's continuous residence in the United States. In addition,

some of the affidavits do not identify the time period in which the affiant met and interacted with the applicant. The affidavits are not probative in this matter.

Further, the applicant testified that he left the United States and lived in the Philippines from 1982 to 1984. An applicant for temporary resident pursuant to Section 245A must establish continuous unlawful residence for the entire requisite time period. According to 8 C.F.R. § 245a.2(h)(1), 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's acknowledged absence from the United States during the requisite time period, even if accepting the applicant's testimony that he visited the United States during the two-year period, exceeds the 45 days allowed under the regulation. The applicant's return to the Philippines to attend school and failure to return to the United States within 45 days is not an emergent reason. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

The AAO has reviewed the entire record in this matter and does not find that the applicant has established his continuous residence for the applicable time period. 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. The affidavits submitted lack probative value for the reasons above noted. Given the applicant's testimony that he was outside the United States for a two-year period during the statutory period, the applicant has not established continuous residence for the statutory period. 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