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FILE:



Office: LOS ANGELES

Date: **JUL 23 2008**

MSC 05 342 10956

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.

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 September 7, 2005. The applicant was interviewed on October 13, 2006 and was issued a Request for Evidence (RFE) on that same date. The applicant submitted a statement and affidavits in response to the RFE. On December 7, 2006, the director denied the application determining that the applicant had not established his entry into the United States prior to January 1, 1982 and continuous unlawful presence to May 4, 1988. On appeal, the applicant states that he was very nervous during the interview and may have been confused regarding dates but reiterates that he has lived in the United States since 1981 and submits all the documentation 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.* 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. 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 through the date he attempted to file the application.

On the Form I-687, the applicant listed his address for the pertinent time period as: [REDACTED] Northridge, California from 1981 to 1989. The applicant indicated he was self-employed in the landscaping business from 1981 to 1989. The applicant also stated that he left the United States in October 1987 to visit his ill father in Mexico and returned to the United States the same month. The record includes the applicant's August 24, 2005 statement wherein the applicant declares: that upon entry into the United States he began working as a self-employed landscaper for about nine years and then started working for [REDACTED] for two years before returning to landscaping work. The applicant's date of birth is listed as April 10, 1967. The applicant declares in a declaration that his date of birth is April 6, 1967. The date of birth on the translation of the applicant's birth certificate is April 20, 1967. The applicant initially submitted five declarations/affidavits regarding his residences during the requisite time period:

- An August 25, 2005 declaration signed by [REDACTED] and [REDACTED] wherein the declarants state: that they "have known the arrival of our friend [the applicant] to the United States since December 1981;" and that they accompanied the applicant to the INS office to submit his application for the "amnesty program" in October 1987 but that the applicant was turned away because he had traveled outside the country.
- An April 2, 2005 affidavit signed by [REDACTED] who declares that she has known the applicant about 20 years; that the applicant recently married her niece but the applicant and her niece had been living together about 14 years; and that she knew

the applicant had been living in the United States since the early 1980s because they lived in the same neighborhood.

- An April 2, 2005 affidavit signed by [REDACTED] who declares that she has known the applicant for 20 years, that she met him when he was her neighbor, that they continue to visit each other frequently, and see each other at family reunions and birthday parties.

An April 11, 2005 affidavit signed by [REDACTED] who declares that she has known the applicant since he arrived in the United States in 1981, that they lived in the same neighborhood for many years, and that her friends and the applicant's friends have get togethers on the weekends.

- A July 16, 2005 affidavit signed by [REDACTED] who declares that he has known the applicant since the applicant was 10 years old, knows the applicant resided in the United States since 1982 because they have always communicated with each other, and that the applicant and he reunited in the United States because they live in the same city and the applicant's wife is the niece of the affiant's wife.

The record contains a translation of the applicant's statement taken at his October 13, 2006 interview. The applicant indicates that he started working in landscaping in December 1981 first for a Japanese individual and then for a Chinese individual for a total of 14 years and then started working in a restaurant for two years. In response to the director's RFE, the applicant submitted his social security earnings statement showing that the applicant had social security earnings in 1989, 1990, 1997, 1998, and 2000 through 2005. The applicant also submitted a letter of employment showing employment since September 2005. As the letter does not include employment during the requisite time period, the letter is not probative in this matter. The applicant also submitted four additional affidavits to establish his continuous presence in the United States since 1982:

- A November 8, 2006 affidavit signed by [REDACTED] who declares that he has known the applicant since 1982 when they met through a soccer game and that he has remained good friends with the applicant because they live in the same neighborhood.
- A November 8, 2006 affidavit signed by [REDACTED] who declares that he has known the applicant since 1982 as he used to visit a family member who was good friends with the applicant in the applicant's neighborhood.
- A November 7, 2006 affidavit signed by [REDACTED] who declares: that he has known the applicant for more than 20 years, that he and the applicant first met in 1987 at work, and that they have been friends ever since.
- A May 16, 2005 affidavit signed by [REDACTED] who declares that has known the applicant since the applicant came to the United States in 1982, that the applicant lived with the affiant for a while, and that he has stayed in contact with the applicant because they live in the same neighborhood.

The AAO has reviewed the documentation submitted and observes the following deficiencies. The applicant has not submitted any information or documentation confirming his claimed landscaping employment between 1981 and 1989. The applicant's October 13, 2006 interview statement indicating

employment for others conflicts with the information provided on the applicant's Form I-687 which indicates that the applicant was self-employed. The nine declarations/affidavits submitted do not contain sufficient information to enable CIS to corroborate the applicant's claimed residence during the requisite time period. The only affidavit that suggests that the applicant lived at a specific address is the May 16, 2005 affidavit of [REDACTED]. Mr. [REDACTED] states that the applicant lived with him for a while when the applicant first came to the United States in 1982, but then the applicant moved elsewhere in the neighborhood. Mr. [REDACTED] does not specify the time period the applicant lived with him, thus it is not possible to confirm from this affidavit that the applicant lived in the United States at a specific address for the requisite time period. The affidavits do not clearly set forth the applicant's actual residence during the requisite time period. The affidavits lack detail of the circumstances and events, as well as corroborating evidence, associated with the applicant's actual residence.

In addition, the affiants/declarant state generally, that they have known the applicant since 1982 either through the neighborhood, meeting at a local soccer game or through relatives. The affidavits submitted do not provide detail regarding subsequent events and circumstances surrounding the affiants' relationship with the applicant during the requisite time period. These affidavits lack probative value in establishing the applicant's continuous unlawful residence in the United States for the requisite time period. The general nature of the information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

The general affidavits/declaration provided and the applicant's statement comprise the only information regarding the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The applicant has not submitted any independent corroborating evidence of his residence in the United States during the requisite time period. The statements and affidavits lack probative value for the reasons noted. The absence of probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 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. The appeal will be dismissed.

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