

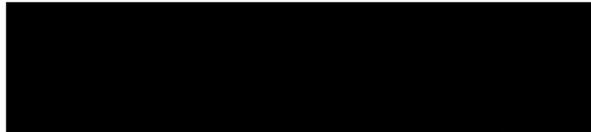
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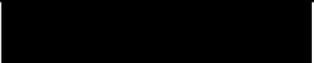


U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: PHOENIX

Date: **JUL 24 2008**

MSC 06 083 11386

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Phoenix. 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.

On appeal, the applicant discusses his residence in the United States, indicating that he believes he is entitled to the immigration benefit sought, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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)(1).

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits

- [REDACTED]

The affiant submitted a sworn affidavit stating that she has personal knowledge that the applicant has resided in the United States since 1981. The affiant lists addresses for the applicant from 1983 through the date of her affidavit (October 10, 2005). The affiant states that she is a friend of the applicant's family, and that she knew them from California. The affiant states that she then moved to Arizona where she saw the applicant working at Dennys. The affiant states that the applicant then moved to Lake Havasu in 1997. The affiant provides no additional information.

- [REDACTED]

The affiant submitted a sworn affidavit stating that he is the applicant's brother, and that he and the applicant came to the United States in 1981. The affiant states that in 1983 he and the applicant came to California, later moving to Arizona. The affiant lists addresses where the applicant resided from 1983 through the date of the affidavit (October 10, 2005). The affiant provides no additional information.

• [REDACTED]

The affiant submitted a sworn affidavit stating that he is the applicant's brother-in-law, having married the sister of the applicant's wife in 1999. The affiant states that he has known the applicant since the applicant moved to Arizona (1997). The affiant states that he has personal knowledge of the applicant's addresses in the United States from 1983 through the date of his affidavit on October 13, 2005.

APPLICANT'S UNSWORN STATEMENT

- The applicant issued an unsworn statement on November 25, 2005. The applicant states that: he came to the United States with family in 1981 at the age of nine; he returned to Mexico with his father in December of 1983, and that he returned to Mexico with a brother approximately one month later and resided with a different brother in California; in 1985 he moved with family to Chicago where he stayed until 1987; his brother and father applied for the amnesty program that began in 1987, but for some unstated reason the applicant was unable to do so; he then returned to Mexico but was unhappy so he again returned to the United States; he then attempted to apply for amnesty but was told he was not eligible because he had left the United States without advance parole; he returned to Mexico in 1989 and was married; he returned to the United States one month later with his wife; and he has three children, all of whom were born in the United States.

OTHER EVIDENCE

- The applicant submitted additional evidence: payroll information; identification documents; tax returns; payroll records; receipts; etc., none of which shall be further considered because none of the records are within the requisite period for the immigration benefit sought.

The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

The applicant has submitted several affidavits and his unsworn statement in support of his application. Although not required, he has not provided any contemporaneous evidence of residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits provided by non-family members did not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the

asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted.

Further, the affidavit submitted by the applicant's brother lacks sufficient detail to establish the applicant's continuous residence in the United States for the duration of the requisite period. Again, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavit submitted by the applicant's brother did not provide detailed evidence establishing the details of his association or relationship, or detailed accounts of his ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. **The affidavit is vague and general. To be considered probative, the affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted.**

Finally, the applicant's unsworn statement alone is not sufficient to sustain the burden of proof in these proceedings. 8 C.F.R. § 245a.2(d)(6). The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 applicant's reliance upon documents with minimal probative value, it is concluded that the affidavit and sworn statement of the applicant submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.