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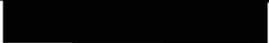
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Services

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FILE:



MSC-05-230-11013

Office: NEW YORK Date:

JUL 24 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.

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, 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. 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. Specifically, in her Notice of Intent to Deny (NOID), the director stated that though the applicant submitted affidavits in support of his application, her office did not find them credible. She granted the applicant 30 days within which to submit additional evidence in support of his application. Though the director noted that the applicant submitted a letter from counsel in response to her NOID, she found that this evidence was not sufficient to overcome her reasons for denial as stated in her NOID. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief through counsel. In this brief, counsel asserts that the applicant's interview with a Citizenship and Immigration Services (CIS) officer pursuant to his Form I-687 application was not completed because the interviewing officer stated that he wanted to review the applicant's prior Form I-687 application that he filed in 1991, which was not available to him prior to that interview. He claims that the application was adjudicated without consideration of this additional evidence. Counsel further asserts that due weight was not given to the affidavits the applicant submitted in support of his application.

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)(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) 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 18, 2005. 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 showed his addresses in the United States during the requisite period to be: [REDACTED] from July 1981 until January 1983; and [REDACTED] from February 1983 until August 1988. At part #31 of this Form I-687 where the applicant was asked to list all of his affiliations with clubs, organizations, unions or churches, he indicated that he had no such affiliations. At part #32

where the applicant was asked to list all of his absences from the United States, he indicated that he had two absences during the requisite period. He indicated that he was absent from October 1982 to November 1982 when he went to Pakistan to get married and from January to February 1988 when he went to Pakistan to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was self-employed in Bronx, New York from August 1981 until December 1982 doing odd jobs; and that he was self-employed in Chicago, Illinois from February 1983 until June 1994 doing odd jobs.

Also in the record is a Form I-687 that the applicant submitted on March 21, 1990. At part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] Illinois from August 1981 until October 1982; and [REDACTED] New York from January 1983 until July 1988. The applicant did not indicate his address of residence from November or December 1982. It is noted that while the addresses of residence are similar to those in the applicant's subsequently filed Form I-687, the dates associated with those residences are not consistent. At part #34 of this application where the applicant was asked to list all of his affiliations with clubs, organizations and churches, he indicated that he had no such affiliations. At part #35 where the applicant was asked to list all of his absences from the United States, he indicated that he had one absence during the requisite period. He indicated that he was absent from January to February 1988 when he went to Pakistan because of a death in the family. It is noted that the applicant's subsequently filed Form I-687 states that the applicant was also absent from October to November in 1982 when he went to Pakistan to get married. At part #36, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was employed as a helper in an unspecified location at a submarine shop from December 1981 until May 1985 and then at Dinoro's Café as a cleaner from September 1985 until July 1988. It is noted that this employment is not consistent with his subsequently filed Form I-687, where he indicated that he was self-employed for the duration of the requisite period.

The applicant was not consistent regarding the dates associated with residences in Bronx, New York and Chicago, Illinois, regarding the number of absences he had during the requisite period or regarding his employment during the requisite period on his two Forms I-687. These inconsistencies cast doubt on whether he resided continuously in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains a sworn statement from the applicant that is dated August 1, 2005. In this statement, the applicant claims that he first entered the United States in 1981, and that he was married in 1985 and has three children who are 15, eight and four years old. It is noted that the applicant indicated on his Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements that he returned to Pakistan to get married in 1982. It is further noted that the record contains a Form G-325A Biographic Information that the applicant signed on September 3, 2001 and submitted with a Form I-131 Application for Travel Document. This Form G-325A indicates that the applicant was married on [REDACTED] in Attock, Pakistan.

The record also contains a Form I-485 Application to Register Permanent Resident or Adjust Status that the applicant submitted on September 18, 2001. This Form I-485 indicates that the applicant has a wife and two children who all reside in Pakistan.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The record contains the following evidence that is relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period:

1. An affidavit from [REDACTED] that was notarized on July 15, 2005. The affiant submitted a photocopy of his Resident Alien Card with his affidavit. The affiant states that he has known the applicant since February 1982. He states that the applicant resided at [REDACTED] in Astoria New York at that time. He states that he became friends with the applicant because they often ate at the same restaurant. However, he fails to state the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time during that period when he did not see the applicant. It is noted that the applicant indicated on his Form I-687 submitted in 2005 that he resided at that address beginning in 1994. On this form, he stated that he was residing in Bronx, New York in 1982. He also stated that he resided in Chicago until October 1982 on his Form I-687 submitted in 1990. Because of these inconsistencies and because this affidavit is significantly lacking in detail, this affidavit carries very minimal weight as evidence that the applicant resided in the United States during the requisite period.

2. An affidavit from [REDACTED] that was notarized on July 28, 2005. The affiant states that he has resided in Queens, New York for 25 years and that he personally knows that the applicant has resided in the United States since 1982. He states that the applicant resides at [REDACTED] New York. He states that he himself resided continuously in the state of New York from 1982 until the date he submitted this affidavit. He states that he attends a mosque with the applicant for Friday prayer. However, he does not state whether they attended this mosque during the requisite period. It is noted that the applicant stated consistently on both of his Forms I-687 that he was not a member of any organizations or churches. This affiant did not state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time when he did not see the applicant. This is significant because the applicant has stated that he resided in Chicago for part of the requisite period and this affiant states that he resided in the state of New York for that period. Because this affidavit is significantly lacking in detail, it can be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

The applicant also submitted documents as proof of his residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that he resided continuously in the United States in an unlawful manner for the duration of the requisite period. Because these documents are proof of his residence in the United States subsequent to that period, they are not relevant to this proceeding. Therefore, they are not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 15, 2006. In this NOID, the director stated that though the applicant submitted affidavits from [REDACTED] in support of his application, she did not find these affidavits credible. She noted that credible affidavits include documents identifying the affiant, proof that the affiant was in the United States during the requisite period and proof that there was a relationship between the applicant and the affiant. She stated that the affidavits from this applicant did not meet these criteria. Therefore, she found the applicant failed to meet his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a response through counsel. In this response, counsel states that the applicant and counsel appeared for an interview regarding his Form I-687 application submitted pursuant to the CSS/Newman Settlement Agreements. However, he asserts that at the time of the interview, the CIS immigration officer informed the applicant that he would reschedule the interview because he did not have the applicant's complete record of proceedings. Counsel asserts that the officer stated that he would reschedule the interview. He states that the applicant was scheduled to be interviewed pursuant to both his Form I-687 and his Form I-485 applications on March 6, 2006.

The applicant also submits an appointment notice that indicates that the applicant was scheduled for an interview on March 6, 2006 in Garden City, New York. This notice states that the applicant has

filed for temporary resident status pursuant to the CSS/Newman Settlement Agreements and he would like the office in Garden City, New York to send his file to Federal Plaza. It is noted that this appointment notice is dated subsequent to the date the director issued her NOID.

The director denied the application for temporary residence on August 20, 2007. In denying the application, the director stated that though the applicant's attorney submitted a letter that disputed whether the applicant was interviewed pursuant to his Form I-687 application, there was a sworn statement in the record taken on the date of the applicant's interview on which the applicant submitted testimony. The director stated that the existence of this sworn statement in the record indicated that the interview took place on that date. The director further stated that though counsel asserted that the interview was not completed, this assertion did not carry evidentiary weight. The director stated that because the applicant did not submit additional evidence in support of his application, he failed to overcome the director's reasons for denial as stated in the NOID.

On appeal, the applicant submits a brief through counsel. In this brief, counsel re-asserts that the applicant's interview on August 1, 2005 was not a complete interview because the record was not complete at that time. He goes on to assert that due weight was not accorded to the affidavits the applicant submitted in support of his application.

The AAO has reviewed the evidence in the record, including both of the applicant's Forms I-687 and his Form I-485 and evidence submitted with these forms and has determined that the applicant has not met his burden of proof. The applicant was not consistent regarding when he resided in Chicago, Illinois and the Bronx, New York on his Forms I-687. He was also not consistent regarding the dates of his absences from the United States or his employment in the United States on these forms. He has submitted an affidavit from [REDACTED] which states that the applicant resided in Astoria, New York when he first met him in 1982 when neither of the applicant's Forms I-687 indicates that he resided in Astoria, New York at that time. His Form I-687 submitted in 2005 pursuant to the CSS/Newman Settlement Agreements states that he resided in the Bronx, New York in 1982 and his Form I-687 submitted in 1990 indicates that he resided in Chicago, Illinois until October 1982. Neither Form I-687 indicates that the applicant resided in Astoria, New York during the requisite period. Though the applicant has also submitted an affidavit from [REDACTED] this affiant does not provide details regarding the frequency with which he saw the applicant or whether there were periods of time when he did not see the applicant during the requisite period. This is significant because this affiant states that he has continuously resided in the state of New York and the applicant has indicated that he resided in Chicago for part of the requisite period on both of his Forms I-687. Affiant [REDACTED] states that he went to Friday prayers with the applicant when the applicant has not stated that he is affiliated with any churches or organizations on either of his Forms I-687. These inconsistencies cast doubt on the applicant's assertion that he resided continuously in the United States for the duration of the requisite period.

Though counsel asserts both in his response to the director's NOID and on appeal that the applicant's interview was not completed, he has not submitted evidence other than his own assertion that this is the case and the record does not indicate that the applicant's interview was incomplete.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, as was previously noted, to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). In this case, the applicant has not submitted sufficient evidence apart from his own testimony to prove his eligibility for the reasons previously noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 he 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