



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 06 095 12809

Office: NATIONAL BENEFITS CENTER Date:

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: 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.

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 Director, National Benefits Center, and 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, the director discussed a number of deficiencies in the only supporting affidavit the applicant had submitted to corroborate his claim and ultimately 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 submitted additional documentation in an effort to overcome the director's adverse findings.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 and probative evidence to demonstrate that he resided in the United States during the requisite time 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 January 3, 2006. At No. 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 only his current address in the United States and failed to state the duration of his residence at that address. The applicant provided no supporting documentation to corroborate his claim.

Accordingly, the director issued a Notice of Intent to Deny (NOID) dated February 17, 2006, allowing the applicant thirty days in which to supplement the record with evidence to establish his eligibility for the immigration benefit sought.

In response, the applicant provided an affidavit dated February 16, 2006 from [redacted] who claimed that he had known the applicant since 1977. The affiant provided the applicant's current residential address and claimed that around the year 1978, the applicant discussed legalizing his status through the amnesty program. As properly noted in the director's subsequent decision dated July 24, 2006, denying the application, the applicant was only one year old in 1978. In light of this relevant fact, the director determined that the applicant failed to submit credible documentation in support of his claim. Additionally, the AAO notes that, aside from the lack of credibility, the affidavit submitted in response to the NOID also lacks probative value in that the affiant provided no information about the events and circumstances of the applicant's life during his alleged residence in the United States within the statutory period. The affiant also claims that the applicant has been a friend with whom he would "talk often and regularly." However, the affiant provides no details that would lend credibility to his claim of a long-term relationship with the applicant.

On appeal, the applicant provides a letter dated August 23, 2006, explaining that the above affiant is his uncle, who has known the applicant since birth. The applicant also submitted additional evidence in the form of two affidavits. The first affidavit, dated August 7, 2006, was signed by [REDACTED] who claimed that the applicant worked at his farm and potato warehouse during the summer of 1992. However, the time period addressed in this affidavit is not within the statutory period. As such, this document is not relevant to the applicant's claim. Additionally, this document suggests that the applicant was not forthcoming with information that was requested in the Form I-687. Specifically, No. 33 of the application asks the applicant to provide his employment history in the United States dating back to the commencement of the statutory period. The applicant failed to list any employment in the United States on his application despite the affiant's claim that he employed the applicant in 1992. 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 applicant also provided another affidavit dated August 7, 2006 from [REDACTED] who provided the address where he claimed he resided with his brother and the applicant in 1980. It is noted that the affiant now claims to be the applicant's uncle, whereas in his earlier affidavit he claimed that they were friends. Moreover, this statement also lacks probative value as the affiant did not address the issue of the applicant's residence in the United States during the statutorily relevant time. Even if the AAO were to concede the affiant's claim that the applicant was residing in the United States in 1980, the statutory period did not commence until January 1, 1982, or two years after the time period specifically addressed by the affiant. In addition, the address where the affiant claims to have lived with the applicant and his father, [REDACTED] Chicago, Illinois, is not listed as one of the applicant's residences in the United States at No. 30 of his Form I-687. Lastly, the text of the affidavit was clearly altered without any indication as to why and by whom the changes were made. As such, not only is this affidavit lacking in probative value, the unexplained changes in the text cause the AAO to further question the document's validity.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient attestations that are lacking in probative value. The absence of probative and credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the record as noted above, seriously detract from the credibility of this 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 he has 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-*, 20 I&N Dec. 77. 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.