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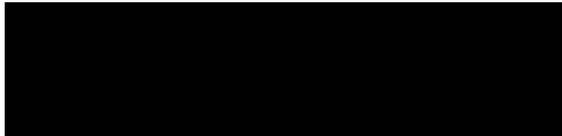
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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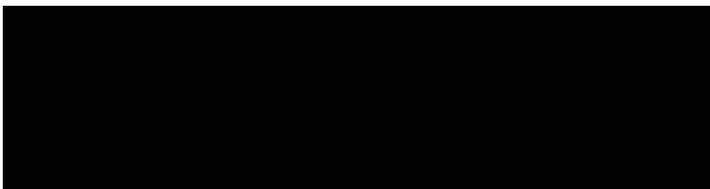
Applicant:



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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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, or *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, 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 to U.S. Citizenship and Immigration Services (CIS). 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, counsel for the applicant requests that the application be considered for humanitarian reasons.

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 periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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.12(e).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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 applicant 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and resided in the United States for the requisite period.

The record reflects that on September 15, 2005, the applicant filed a Form I-687, Application for Status as a Temporary Resident. On February 28, 2006, the applicant appeared for an interview based on his application.

On March 3, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) the application, finding that the applicant failed to submit credible evidence that would constitute a preponderance of the evidence as to his residence in the United States during the period required under the LIFE Act. The director also found that the affidavits submitted by the applicant were not corroborated by other evidence in the record and were not credible. The director noted that the applicant, a citizen of Ecuador, claimed to have entered the United States through Mexico, without inspection, in November 1981 but did not submit evidence of a valid entry to Mexico. The director also noted that the only evidence the applicant submitted of having resided continuously in the United States were affidavits from individuals who did not have direct personal knowledge of the events and circumstances of the applicant’s residency. Finally, the director noted that the affidavits submitted were not further supplemented by supporting documentation. The director informed the applicant that he had 30 days from the receipt of the NOID to submit any information the applicant felt was relevant to his case.

In response, the applicant did not submit additional documentation. Counsel attested that the applicant had complied with the LIFE Act regulations and that there were no more documents he could produce. He asked that the director honor the validity of the documents in the record.

On April 10, 2006, the director denied the application, finding that the applicant failed to overcome the grounds for denial as stated in the NOID.

On appeal, counsel for the applicant requests that the director’s adverse decision be reconsidered on humanitarian grounds.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States before January 1, 1982; his continuous residence from January 1, 1982, through May 4, 1988; and, his continuous physical presence in the United States during the requisite period.

The record of proceeding contains the following evidence relating to the requisite period:

Letters and Affidavits

- An “Affidavit of Residence” form, dated December 2, 1991, from [REDACTED]. The form lists the applicant’s address in New York, consistent with the applicant’s information on his Form I-687 Application for Status as a Temporary Resident. The form states that the applicant lived with the affiant at the listed address from November 1981 to October 1988. The form language states that the rent receipts and household bills were in the affiant’s name and that the applicant contributed toward payment of the rent and household bills. This affidavit, prepared on a fill-in-the-blank form, contains no details regarding any relationship with the applicant during the requisite period and fails to state when or where the affiant and the applicant met. [REDACTED] fails to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiant resided in the United States during the requisite period;
- Two duplicate “Affidavit of Witness” forms, dated December 2, 1991. The forms, signed by [REDACTED] and [REDACTED] list the applicant’s address in New York from November 1981 through December 1991, and are consistent with information on his Form I-687. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the address listed. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____.” [REDACTED] added “We are good friends, we know each other from our country”; [REDACTED] added [REDACTED] is a very great person. We appreciate him.” These affidavits, prepared on a fill-in-the-blank form, contain no details regarding any relationship with the applicant during the requisite period and fail to state when or where the affiants and the applicant met. [REDACTED] and [REDACTED] fail to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence other than his address. In addition, there is no evidence that the affiants resided in the United States during the requisite period;
- An “Affirmation of Third Party in Regards to Absence from the United States” form, undated and signed by [REDACTED]. The form lists the affiant’s current

address and states that the applicant was absent from the United States July 20, 1987, to August 25. The form allows the affiant to fill in a statement attesting "that the above mention was absent for the period stated above because _____" [REDACTED] added "I was the person who personally accompanied him to the airport the day of his departure to Ecuador in 1987." [REDACTED] provides no details regarding any relationship with the applicant during the requisite period and fails to state when and where the affiant and the applicant met. [REDACTED] fails to provide any meaningful details about the applicant's date of departure in 1987 and only states that he accompanied him to the airport on the day of his departure in 1987 not that he had any personal knowledge of the applicant's residence in the United States prior to that date or of the applicant's return to the United States later that year.

For the reasons noted above, these affidavits can be given little evidentiary weight and are of little probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous affidavits in support of his application, he has not provided any contemporaneous evidence of residence in the United States during 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. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. The duplicative language and use of forms also detract from the probative value of the affidavits.

The record of proceedings contains various other documents, including the birth certificates of the applicant's three U.S. citizen children, indicating that they were born in New York on September 22, 1994, August 7, 1996, and March 21, 2003. None of this evidence addresses the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have last entered the United States without inspection on August 25, 1987, and to have resided for the duration of the requisite period in New York. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Therefore, based on the above, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. The applicant has not overcome the particular basis of denial cited by the director and is ineligible for temporary permanent resident status.

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