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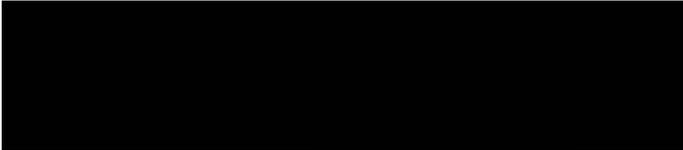
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: JUN 26 2008

MSC 06 101 17736

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.

for Michael T. Kelly
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. 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) on January 9, 2006. The applicant was interviewed on October 5, 2006. The director denied the application on October 25, 2006.

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).

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.* 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 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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of attempting to file the application.

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 indicates he last entered the United States on an H-2B visa in July 2001. The applicant lists his addresses for the pertinent time period as: [REDACTED] Oacoma, South Dakota from March 1981 to December 1987; and [REDACTED] Lodi, California from December 1987 to April 1993. The applicant lists his employment as: a housekeeper at the Oasis Inn in Oacoma, South Dakota from March 1981 to December 1987 and as a "CNA" at the Arbor Convalescent Hospital in Lodi, California from December 1987 to April 1993. The applicant lists two absences from the United States: (1) from August 1985 to September 1985; and (2) from May 1986 to June 1986.

The applicant also provided several affidavits to establish his residence in the United States for the requisite time period:

- An affidavit dated November 11, 2005 from [REDACTED] listing the applicant's addresses and stating that she knew the applicant because "[w]e lived in the same house in 1981 until 1984. And now we lived again in the same house." The affiant also stated: "We did not see each other since she [sic] moved out from South Dakota."
- An affidavit dated November 15, 2005 from [REDACTED], the applicant's cousin, stating that the applicant lived in Lodi, California from December 1987 to April 1993.
- An affidavit dated November 17, 2005 from [REDACTED] the applicant's cousin, stating that the applicant lived in Oacoma, South Dakota from March 1981 to December 1987.

The applicant was interviewed by an immigration officer on October 25, 2006 and signed a Form I-215W, Record of Sworn Statement in Affidavit Form, on that date. In the sworn statement, the applicant

declares: that he entered the United States in March 1981 with a "visiting" visa and that it was extended for one year; that he left the United States in April 1982 and returned to the United States in August 1985 with a "visiting" visa; and that he returned home again to the Philippines, got married in 1999, and came back to the United States with a "working" visa in 2001.

The director denied the application on October 25, 2006. The director determined that the applicant was statutorily ineligible as he had failed to establish continuous unlawful presence in the United States since prior to January 1, 1982 to May 4, 1988. The director also noted that the applicant stated that he had not applied and had never tried to apply for amnesty during the eligibility period.

On appeal, the applicant states that he came to the United States in March 1981 and went back home to the Philippines in August 1985 as noted on his Form I-687. The applicant asserts that the interviewing immigration officer made him write down that he went back home to the Philippines in April 1982 instead of the correct date of August 1985. The applicant asserts that he is legally qualified to apply for the CSS Newman category because he was in the United States in March 1981. The applicant also submitted a copy of a facsimile dated November 14, 2006 from [REDACTED] indicating that [REDACTED] was a valued employee of ours at Oasis Inn and a copy of a facsimile dated November 15, 2006 from [REDACTED] listing the applicant on the subject line and indicating that [REDACTED] is a very hard worker and was a good fellow employee. The facsimiles are on the letterhead of the Oasis Inn in Oacoma, South Dakota.

The AAO does not find the applicant's appeal persuasive. The AAO has reviewed the documentation in the file and finds no documentary evidence of the applicant's entrance into the United States prior to January 1, 1982 and continuous unlawful presence in the United States for the requisite time period. The only evidence supporting the I-687 application is the affidavits submitted, the applicant's sworn statement, the facsimile copies, and the applicant's letter on appeal. This evidence is not sufficient to establish that the application should be approved.

The AAO observes that the November 11, 2005 affidavit from [REDACTED] indicates that the applicant and the affiant lived in the same house until 1984 and that the affiant has not seen the applicant since "she" moved out of South Dakota. The affidavits submitted by the applicant's cousins do not establish how they know that the applicant lived at the address listed on their affidavits. Moreover, none of the affiants provide sufficient details of the events and circumstances establishing how they met the applicant in the United States and that establish their subsequent and ongoing interactions with the applicant. The AAO finds the absence of detail surrounding the circumstances of the affiants' relationship with the applicant detracts from the probative value of the affidavits.

The AAO has also reviewed the copies of the facsimiles submitted by [REDACTED] and [REDACTED]. However, neither facsimile indicates the time period the applicant worked at the Oasis Inn in South Dakota and Ms. [REDACTED]'s facsimile does not include the applicant's name. Neither facsimile provides sufficient information to substantiate that the applicant resided in the United States in an unlawful status for the requisite time period.

The AAO also acknowledges the applicant's claim on appeal that he was "made" to write a sworn statement that contained a fact inconsistent with the truth. The AAO does not find this claim credible in that the applicant provides no details about how and why he was "made" to write and swear to information that he knew to be untrue. Even if the applicant's claim was accepted, the AAO finds that the evidence of record does not substantiate the applicant's claim that he entered the United States in March 1981, and continuously resided in the United States in an unlawful status for the required time period.

The affidavits and facsimiles described above and the applicant's inconsistent statements comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. As the affidavits lack detail showing the extent of the affiants' contacts and interactions with the applicant and provide only general information regarding the applicant's presence in the United States, the AAO does not find them probative. The documents in support of the application are not probative of the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed 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 and the applicant's reliance upon deficient affidavits and facsimiles, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States 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.