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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-238-12156

Office: NEW YORK

Date:

JUN 30 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, on May 26, 2005 (together, the I-687 Application). 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 noting that the information and documentation “submitted are insufficient to overcome the grounds for denial.” The director denied the application as 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 a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a statement. On appeal, the applicant stated that the evidence required to prove residence in the United States from January 1, 1982 to May 4, 1988 is “unrealistic” and that his evidence should be reviewed as a whole. The applicant also stated that USCIS “has failed to adequately consider all relevant documents received as evidence to establish that [he] was present during the statutory period.” As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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).

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 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). 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

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

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 26, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as 42 Pitt Street, New York, New York,

from June 1981 to January 1987. At part #33, he listed his first employment in the United States as a construction worker for ██████████ Construction from July 1981 to May 19895. At part #32, the applicant lists two absences from the United States during the relevant time period. The applicant visited Malaysia from September 1986 to October 1986 and from September 1987 to September 1987.

The applicant has provided two employment letters; a copy of the applicant's 2004 Internal Revenue Service Forms 1040NR and W-2; copies of the applicant's passports; a copy of the applicant's visitor's visa issued on October 14, 1999; a copy of a postmarked letter addressed to the applicant; a copy of the applicant's Form I-94 card; a copy of an application for transfer of funds from The Hongkong and Shanghai Banking Corporation; copies of liquor store licenses; copies of receipts, photographs; and a copy of the applicant's New York driver's license issued on September 22, 2005. The applicant's passport and New York driver's license are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after December 21, 1999 when the applicant entered the United States with a visitor's visa and is not probative of residence before that date. The following evidence relates to the requisite period:

- An employment letter from ██████████ dated November 28, 2005. Mr. ██████████ states that the applicant worked part-time at his store Tai Pei Inc. from October 1981 to December 1981. Mr. ██████████ adds that the applicant visited him after the applicant went to work for a "construction company." Mr. ██████████ included copies of his New York Liquor Authority liquor store licenses for Tai Pei Inc. dated March 1, 1979, March 1, 1980, and March 1, 1981. The record of proceeding also includes a photograph of ██████████ and the applicant in front of a liquor store. The photograph was printed on November 24, 2005 and there is no mention in the record of proceeding regarding when the photograph was taken. The statement is not on company letterhead or notarized. The letter also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that: (1) letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; and (2) if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Furthermore, the AAO notes that the applicant did not list Tai Pei, Inc. as an employer on the Form I-687. The statement from ██████████ does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- Copies of receipts from Carmen Jewelry Co. dated September 21, 1981 and Camera Radio City, Ltd. Dated December 19, 1981. Both receipts include the applicant's name and an address at [REDACTED]. The AAO notes that the addresses listed on receipts are not on the Form I-687. Although receipts for purchases may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence.
- Copies of photographs of the applicant verified during the applicant's interview. The first photograph is dated January 10, 1982 and shows the applicant at Central Park. The second photograph is dated December 17, 1987 with the words "[REDACTED] company" written in red ink beneath the photograph. The third photograph is dated April 22, 1988 with the words "[REDACTED]" written in red ink beneath the photograph. The fourth photograph is dated April 10, 1988 with the words "Auto Show Javits Center" written in red ink beneath the photograph. The fifth photograph with the words "Hawaii 1986" printed on the photograph itself. Although the photographs may indicate presence in the United States, the date entries on the photographs are not persuasive evidence of when the photographs were actually taken. For this reason, the photographs are recognized only as evidence of the applicant's presence in the United States on no more than five different days.
- A copy of an application for transfer of funds from the New York branch of The Hongkong and Shanghai Banking Corporation dated September 8, 1981. The AAO notes that the address listed for the applicant is not on the Form I-687. In response to the director's notice of intent to deny, counsel states that "the acronym 'HSBC HCP' appears as an ink stamp, along with the date and time of the transaction, placed no doubt by an employee of the bank, while making this transaction, as a matter of routine." Most of the ink stamp on the form is illegible. However, the year stamped on the form does not appear to be "1981." Therefore, this document has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A copy of a Form I-94 for the applicant valid from October 11, 1986 to April 10, 1987. This document is evidence of the applicant's residence in the United States beginning in October 1986. However, this document is not probative of residence before that date.
- A copy of a postmarked envelope dated May 14, 1984 and addressed to the applicant at [REDACTED], New York, New York. The envelope was mailed from Malaysia. The AAO notes that the address listed for the applicant is not on the Form I-687. Although the envelope is addressed to the applicant, the envelope has minimal weight as evidence of residence.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States from Canada on June 15, 1981 and to have resided for the duration of the requisite period in New York.

The director issued a notice of intent to deny (NOID) on November 15, 1005 and on March 21, 2006. The director denied the application for temporary residence on July 14, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant stated that the evidence required to prove residence in the United States from January 1, 1982 to May 4, 1988 is "unrealistic" and that his evidence should be reviewed as a whole. The applicant also stated that USCIS "has failed to adequately consider all relevant documents received as evidence to establish that [he] was present during the statutory period." While it may be difficult to procure evidence after more than twenty years, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 lack of credible supporting documentation, it is concluded that 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.