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FILE:



Office: LOS ANGELES

Date: **MAR 05 2008**

MSC-05-040-10067

IN RE:

Applicant:

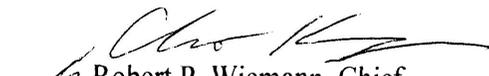


APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, 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), 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. 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, the applicant states that documents contained in his file are proof that he resided in the United States for the requisite period. He further attempts to explain that he was nervous during his interview with the immigration officer and that caused him to forget exact dates.

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)(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. See CSS Settlement Agreement paragraph 11 at page 6 and 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 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 submitted sufficient credible evidence to meet his or her burden of proof of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following attestations:

- A letter dated September 18, 1990, from [REDACTED] of The Church of Jesus Christ of Latter-Day Saints, Huntington Park, California, in which he stated that he has known the applicant since March of 1981, that the applicant and his family were active members of the congregation, that he personally observed them attend Sunday services regularly, that he has called the applicant numerous times and has visited him and his family several times at [REDACTED] Los Angeles, California. This letter is inconsistent with the information provided by the applicant in his Form I-687 application, where, when asked in part #31 to list all of his affiliations or associations in the United States, he listed an affiliation with The Church of Jesus Christ of Latter-Day Saints, Huntington Park, California, from 1985 to 2004. In addition, in part #30 of his Form I-687 application, the applicant listed his address as [REDACTED] Los Angeles, California, from January of 1988 to 1991. These inconsistencies call into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Lastly, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided prior to January 1, 1982, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, and is lacking in detail and probative value, it can be

accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An unsigned, undated letter from the [REDACTED] in which it is stated that the applicant was employed by the company from December 30, 1981 through January of 1985. This letter does not clearly confirm the applicant's residence in the United States during the requisite period because it is undated and unsigned. In addition, the letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not state the address where the applicant resided during the employment period nor does it indicate whether the employment information was taken from company records, the availability of the company records for inspection, the inclusion of any layoff periods, or the applicant's duties with the company. 8 C.F.R. § 245a.2(d)(3)(i).
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1980 and he lists addresses for the applicant from 1980 to 1990. Here, there is no evidence to demonstrate the affiant's presence in the United States during the requisite period or that the addresses listed are based upon first hand knowledge. The applicant fails to demonstrate how he met the applicant and the frequency with which he communicated with him. This affidavit is significantly lacking in detail; and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following attestations:

- A letter from [REDACTED] in which she stated that the applicant and his family lived with her at [REDACTED] Los Angeles, California, from 1980 to May of 1985.
- A letter from [REDACTED] in which she stated that the applicant and his family lived with her at [REDACTED], Los Angeles, California, from February of 1988 to October of 1990.
- A letter from [REDACTED] in which he stated that the applicant and his family lived with him at [REDACTED] from June of 1985 to January of 1988.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since March of 1982 when the applicant was referred by a friend to do landscaping work for him.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since December of 1985 when he joined the affiant's church, and that they have become good friends.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 when they met at church and that the applicant did some gardening work for the affiant.

- An affidavit from [REDACTED] in which she stated that the applicant left the country due to a family emergency in December of 1987 and returned in January of 1988.

Although the applicant has submitted a number of attestations in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States throughout the requisite period. Here, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although the affiants attested to the applicant's residence in the United States prior to January 1, 1982, they have failed to provide sufficiently relevant and verifiable testimony to corroborate his claim of residence in the United States. 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. The affidavits are significantly lacking in detail, and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted as evidence earnings statements from [REDACTED] and [REDACTED] Landscaping that do not contain the applicant's name or complete dates of employment. The applicant also submitted two handwritten United States Postal Service Customer's Receipts dated August and September of 1980 and handwritten pay stubs from Ornelas Paint & Body Company dated 1988. However, this evidence is insufficient to demonstrate the applicant's residence prior to January 1, 1982, or his continuous unlawful residence in the United States throughout the requisite period.

In denying the application the director noted that the applicant testified under oath orally and in writing that he left the United States on two occasions, once from December of 1981 to January of 1982, and again from November of 1985 to December of 1985. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

On appeal, the applicant states that he was nervous during his interview with immigration officials and did not remember the exact dates of his absence from the United States. The applicant also states that he entered the United States prior to January 1, 1982, and has continuously resided in the country in an unlawful status (except for brief absences) until the day he filed his Form I-687 in February of 1988. He indicates that he married his wife in Mexico on December 16, 1981 and returned to the United States on December 18, 1981. The applicant submits as evidence copies of his Mexican marriage certificates, with English translations. Here, the applicant's statement conflicts with evidence contained in his Form I-687 application, part #32 where he indicated that he was absent from the United States in December of 1981, 1985, and 1987. It also conflicts with statements he made under oath during his interview with the immigration officer that he entered the United States in March of 1980, that he left the country in December of 1981 and returned in January of 1982; and that he left the country in November of 1985 and returned in December of 1985. The applicant has failed to specify the dates of his absences from the country in 1987 and provides conflicting evidence with regard to his other absences from the country. Because the assertions are not consistent with what the applicant showed on his Form I-687 application, doubt is cast on the assertions, and therefore, in the absence

of independent corroborative documentation, they are insufficient to show the applicant's continuous unlawful residence in the United States during the requisite period.

In summary, the applicant has not provided contemporaneous evidence of his continuous residence in an unlawful status throughout the requisite period. He has submitted attestations that lack sufficient detail, fail to confirm the applicant's residence in the United States, conflict with the information provided on the applicant's Form I-687 application, and fail to conform to regulatory standards.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 contradictory statements and his 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 for the requisite period 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.