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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [REDACTED]
MSC-05-138-10071

Office: NEW YORK

Date: MAR 06 2008

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:

[REDACTED]

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, 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 February 15, 2005. 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 noted that applications submitted with unverifiable documentation may be denied, and that Citizenship and Immigration Services (CIS) had been unable to contact two of the affiants in this case, [REDACTED] and [REDACTED] to verify the information in their affidavits. The director also noted that the third affidavit submitted by the applicant indicated that the affiant had known the applicant only since 1985. The director denied the application on August 22, 2006, 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.¹

On appeal, the applicant explains that when CIS tried to contact [REDACTED] he was on vacation and his secretary provided CIS with his cell phone number, but that CIS did not call him; he submits another letter from [REDACTED] explaining this and confirming the information he provided previously. The applicant also asserts that [REDACTED] is on vacation, and that the applicant will try to send more information from him if his return is timely. He requests that CIS contact [REDACTED] to verify his information “so that they will see that the information is credible.”

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).

¹ The AAO notes that the director issued a Notice of Intent to Deny (NOID) on March 24, 2006. It contained erroneous conclusions based on evidence that was not contained in the applicant’s file, affidavits that were written in support of a different applicant’s claim. The applicant explained this in his response to the NOID. The director’s decision of August 22, 2006 set forth additional grounds for denial but continued to allude to the reasons set forth in the NOID and did not acknowledge the prior error. The NOID has no validity in this case, and no consideration is given to the reasons set forth therein.

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 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). 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 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 (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 resided in the United States for the duration of the requisite period. In this case, the applicant has failed to meet this burden.

The applicant has submitted the following evidence in support of his claim:

1. An affidavit dated April 18, 2006 from [REDACTED] certifying that he has known the applicant and his family since 1985 and, “[a]dditionally . . . that [the applicant] lived in the United States continuously since 1981 until the amnesty period [sic].” As the affiant did not know the applicant before 1985, information regarding his residence before that date is not based on personal knowledge and has no probative value. Moreover, the affiant does not state where the applicant resided since 1985 or where or how he met the applicant and provides no details regarding what he claims to be a relationship of over 25 years. The affidavit can therefore be accorded minimal weight as evidence of the applicant’s residence in the United States for the requisite period.
2. An affidavit dated April 12, 2006 from [REDACTED], his business card, and an undated photo of him with the applicant. [REDACTED] states that he has known the applicant since 1981 and that the applicant’s father is a personal friend. He adds that the applicant came to the United States when he was a young man, approximately 16 years old, that he entered from Canada with his father, that his family did not have much money, and that the applicant did odd jobs for [REDACTED]. He adds that the applicant resided in the United States, with two brief absences, since his entry in 1981. Although the information is consistent with information provided by the applicant on his I-687 Application, the affidavit lacks details that would lend it credibility. [REDACTED] fails to explain how or where he met the applicant and fails to provide any details regarding a claimed relationship of over 25 years. There is also no evidence that the affiant resided in the United States during the requisite period. For these reasons, the affidavit can be accorded minimal weight as evidence of the applicant’s residence in the United States for the requisite period.
3. Two letters dated February 3, 2005 and September 12, 2006, respectively, from [REDACTED]. In the 2005 letter, [REDACTED] claims to have known the applicant personally since 1981, adding, “[t]o the best of my knowledge he has been in the United States since 1981 and has been continuously living in the USA, except for a brief absence.” In the 2006 letter, [REDACTED] affirms the information in the 2005 letter and explains that he was away on vacation when an Immigration Officer tried to contact him. Neither letter is notarized, and no identification accompanies the letters. Again, as in the affidavits listed above, the applicant does not explain the basis of his knowledge of the applicant’s entry or residence in the United States during the requisite period. He provides no details regarding where or how they met or of a claimed relationship of over 25 years. Again, for those reasons, the letters have minimal probative value.

The remaining evidence in the record is comprised of the Form I-687 application and the applicant’s statements. He claims to have entered the United States in October 1981 from Canada with his father. The record shows that he would have been 14 years old at that time. The applicant has provided neither school records nor medical records nor work records for any time during the requisite period. He also failed to provide any evidence from or about his father to indicate that his father had resided in the United States or that the applicant had resided with him. He failed to provide any evidence from any responsible adult regarding the circumstances of his travel to New York as a child or how he survived in New York during his teenage years and throughout the requisite period.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. The two affidavits and two letters in the record are bereft of sufficient detail to support the applicant's claim of residence since 1981; and the applicant's assertions are not supported by any evidence. Regardless of the failed attempts to contact the three individuals who wrote on behalf of the applicant, their written statements do not support a conclusion that those individuals had any direct personal knowledge of the applicant's entry or residence in the United States for the requisite period. As noted above, 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 absence of 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 and the applicant's reliance on two affidavits and two letters that have been found to have minimal probative value, 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.