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MSC-05-076-10025

Office: NEW YORK

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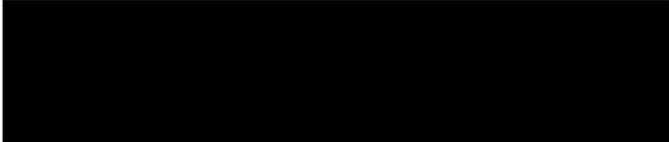
Applicant:



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 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 December 9, 2004 (together comprising his 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, the director considered the applicant's I-687 Application and documents submitted in support of his claim and his testimony and prior applications in the record. Prior applications included a Form I-140, "Immigrant Petition for Alien Worker," filed on February 13, 2001; a form ETA 750, "Application for Alien Employment Certification," filed on January 13, 1998; and a prior Form I-687, dated February 6, 1990, filed in connection with a request for class membership in a legalization class-action lawsuit. The director noted that (1) all evidence submitted in 1990 indicated that the applicant entered in 1983, and that the applicant and the evidence changed in connection with his I-687 Application to reflect that the entry was in 1981; and (2) other evidence, including the prior applications, contained material contradictions regarding when the applicant first entered the United States and indicated that the applicant was residing in Poland during the requisite period and arrived in the United States for the first time with a B-2 Visa on August 21, 1988. 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 reasserts his claim that he first entered the United States in 1981 through Canada and that he has never stated otherwise. He states that, in 1990, when he was interviewed by the Immigration and Naturalization Service (or Service, now Citizenship and Immigration Services or CIS) he was told by the Service officer that he entered in December 1983 and the applicant corrected the officer, indicating that he entered in 1981. The applicant also claims that statements from two of his friends, [REDACTED] and [REDACTED] [sic], indicated that they have known him since 1981, regardless of any apparent inconsistency with prior statements. He also claims that he told an officer truthfully that the last date he traveled outside the United States was "in August 21, 1988 as a Visitor nonimmigrant, [sic] I re-entered the United States after having visited my ill mother. I needed a visa to re-enter the U.S." The applicant did not provide any additional evidence or address the director's decision regarding contradictions on his prior application forms.

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. 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. Moreover, he has provided contradictory information under oath regarding his date of entry and dates of residence in the United States and submitted contemporaneous evidence that supports a conclusion that he did not reside in the United States during the requisite period as claimed.

The following documents in the applicant's administrative record are relevant to his I-687 Application:

1. Numerous affidavits by acquaintances claiming knowledge of the applicant during the requisite period. The applicant submitted affidavits in 1990 and again in 2006 from some of the same individuals. In January 1990, [REDACTED] and [REDACTED] signed duplicate notarized statements that the applicant "has lived in the U.S.A. in New Jersey at the following addresses: [REDACTED] Somerville, N.J. 08876 from 11/88 to the present and at [REDACTED], Jersey City, N.J. from 12/83 to 11/88." The addresses are the same as those listed by the applicant on his 1990 Form I-687. Also in the record are notarized statements signed in January 1990 from [REDACTED] and in December 1989 from [REDACTED] certifying that they have known the applicant since 1984. In 2006, the applicant submitted notarized statements from the same three individuals contradicting those statements: [REDACTED] and [REDACTED] again signed duplicate notarized statements on January 6, 2006, this time indicating that they have known the applicant since October 1981 and that "[the applicant] has lived in the USA in the states of New Jersey and New York at the following addresses: 1) [REDACTED] Jersey City, NJ – November 1981 to November 1983 [and] 2) 4 Duncan Court, Jersey City, NJ – December 1983 to November 1988 . . ." Again, the addresses are the same as the revised list of addresses on the applicant's revised Form I-687 Application. Two other notarized statements submitted in 2006, from [REDACTED] and [REDACTED] contain duplicate language. Others, from [REDACTED] and [REDACTED] state simply that they have known the applicant "from October 1981 to the present."

The affiants' use of duplicate language, even including duplicate spelling errors, and failure to provide any details regarding the circumstances of the applicant's claimed entry into the United States in October 1981 or the circumstances of his residence or their relationships of over 20 years detract from the credibility of their statements. Moreover, despite the applicant's assertions on appeal to the contrary, the affidavits contain material contradictions, as noted above. The affidavits, therefore, have no probative value as evidence of the applicant's entry or residence in the United States during the requisite period.

2. A notarized statement, dated January 19, 1990, certifying that the applicant "was employ[ed] by our comp. from 1984 Febr to Aug. 1988." As it neither indicates the name of the company nor includes a legible signature or name or title of the person signing, it has no evidentiary value.
3. Various receipt forms. The record contains (1) two receipts, dated 2/10/88 and 6/15/84, from "ARITON," written in Polish, other than the words "Consigner" and "Recipient"; the applicant's name and addresses, consistent with the addresses he listed on his I-687 Application, are written under "Consigner"; no signatures appear on the form; (2) a receipt from Polonez Travel Services,

dated 7/12/86, also filled out in Polish; the applicant's name is written on the receipt, and again, no signature is on the form; (3) four rent receipt forms, covering the months of November and December 1981 and April and October 1982; they each indicate that \$450 was received from the applicant for the rent of [REDACTED] by someone with an illegible signature; they do not show the address of the rental space. These receipts can be afforded no evidentiary weight, as the signature of the recipient is either lacking or illegible, the address of the applicant is lacking, or the information on the receipts has not been translated.

4. Copies of the applicant's cancelled passport issued in Poland on an unknown date. The passport contains Polish date stamps for 1987 and 1988, indicating that the applicant was in Poland at those times. It also contains a B-2 Visa issued at Posnan on July 12, 1988 and a U.S. immigration stamp showing that the applicant was admitted at New York on August 21, 1988; it contains no other U.S. visas or entry stamps. The passport corroborates the applicant's statement on appeal that he entered the United States on the date noted; but it contradicts information on his I-687 Application that his only absence from the United States during the requisite period was from October 1988 to November 1988.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have no probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Not one affiant indicates credible personal knowledge of the applicant's entry to the United States in 1981 or credibly attests to his presence in the United States during the requisite period. Three of the seven affiants who attest to the applicant's residence in the United States during the requisite period provide contradictory information regarding the dates they claim to have known the applicant. The duplicative language and lack of detail also detract from the probative value of these affidavits. The cancelled passport indicates that the applicant was in Poland during the time he claims to have resided in the United States.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have first entered the United States on five different dates. On the 1990 Form I-687, he claims to have first entered in December 1983; the I-140 submitted on his behalf indicates that he entered on August 21, 1988; on his I-687 Application, he claims to have first entered in August 1981; in his statement on appeal, he claims to have entered in October or December 1981. Form I-687 asks the applicant to list his residences and his employment in the United States since first entry, and his absences from the country since first entry. His responses in this regard are also inconsistent. His 1990 Form I-687 does not list any employment or residence in the United States prior to 1983 and indicates two absences, visits to Poland from July to August 1988 and from November to December 1987. Contradicting those claims, his I-687 Application, filed in 2004, lists an additional residence from August 1981 to December 1983 and employment since August 1981 and indicates only one absence from the United States, a visit to Poland from October to November 1988.

As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are inconsistent and not supported by

any credible evidence in the record. In fact the record contains credible evidence that contradicts his claims, including his cancelled passport. Moreover, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.