



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-329-10981

Office: New York

Date: MAR 07 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: 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, New York, 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. 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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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 asserts that the application for temporary resident status was not properly processed pursuant to the terms of the CSS/Newman Settlement Agreements.

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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 25, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in [REDACTED], Terre Haute, Indiana from July 1981 to February 1990. Similarly, at part #33, he showed his first employment in the United States to be for Advanced Marketing, [REDACTED], New York, New York in the occupation of sales from February 1985 to June 1991.

The applicant has submitted a notarized statement dated December 9, 2005, that he came into the United States from Canada on July 10, 1981, without inspection. The applicant has submitted a letter dated July 17, 2006, from his mother [REDACTED] of Ampang, Malaysia, that her husband, her and the applicant traveled from Toronto, Canada, to New York, New York in 1981 where the family stayed two to three weeks before relocating to the State of Indiana. As the applicant was born August 10, 1965, he was 15 years old on entry.

The applicant submitted the following relevant documentation: letters from the applicant dated August 15, 2006, July 10, 2006, June 29, 2006, and December 9, 2005; copies of pages of the

applicant's passport bearing a student's visa (F-1) issued December 21, 1984 in Kuala Lumpur, Malaysia; and an U.S. immigration admission entry stamp dated "JanX6 1985."

The applicant also submitted the following declarations:

- Notarized declarations from [REDACTED] of New York, New York, dated December 8, 2005, and August 15, 2006, who states that [REDACTED] arrived in San Francisco, California, in April of 1978 on a B-2 visitors' visa and completed his high school and college education here. There is a letter from the San Francisco Conservatory of Ballet dated June 3, 1981, that [REDACTED] was the "official photographer" for that and two other organization along with other documents supporting [REDACTED]'s occupation in San Francisco, California. Mr. [REDACTED] also recounts that when the applicant's family first entered the United States they stayed with his family in New York. He stated that the applicant spent the Christmas holidays "with us" in 1982 and Thanksgiving in 1983.

Since according to the evidence submitted [REDACTED] was working and residing in California in 1981, it is not explained whether the information he has provided concerning the applicant in 1981 is based on his first hand observations. The evidence submitted has minimal probative value in supporting the applicant's claim that the applicant entered the United States in 1981 since all of [REDACTED] information was received indirectly rather than based upon his personal knowledge

- A notarized declaration from [REDACTED] of Flushing, New York, stated that the applicant's mother told her that during the amnesty period in 1987 the applicant attempted to file his application but was turned away. [REDACTED] also recounts that the applicant and his family entered the United States illegally in 1981.

Since [REDACTED]'s statements are based upon information provided by others, the statements have no probative value in this matter. Her information was received indirectly rather than based upon her personal knowledge.

The director denied the application for temporary residence on July 22, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible. The director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but no supporting or direct evidence of this entry was submitted in the record. The applicant and his mother stated that he resided in the United States in the State of Indiana with his mother and father and then they all left the United States to return to Malaysia. The applicant provides a street address in Indiana [REDACTED] [REDACTED], Terre Haute, Indiana) where the family reputedly resided and where the applicant continued to reside from July 1981 to February 1990. However, no indicia was introduced that would prove that the family or the applicant resided there for a total of nine years. Credible documentation would be reasonably obtainable evidence such as rent receipts, medical invoices, school records, utility bills, pay stubs or other such documentation.

Furthermore, evidence in the record of proceeding shows that the applicant had obtained admission into Indiana State University, Terre Haute, Indiana as a foreign student according to the record and a student's visa from the U.S. consulate in Kuala Lumpur, Malaysia as evidenced by the student's visa issued to the applicant on December 21, 1984 as found in his passport in evidence. There is an entry stamp dated January 6, 1985 evidencing the applicant's entry into the United States.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1983 or of entry to the United States before January 1, 1982 except for his own admittedly inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted. Although the applicant has provided proof of residence in the United States after 1983, such proof does not cover the entire requisite period.

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.