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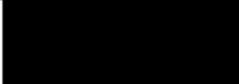
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NATIONAL BENEFITS CENTER

Date: MAR 25 2008

MSC-06-029-11298

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. 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.

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 Director, National Benefits Center. 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 asserts his eligibility for temporary resident status pursuant to 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 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 October 29, 2005. The applicant signed this application under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the application where applicants are 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 New York, New York from December 1981 until June 2002. At part #32 of the application where applicants are asked to list all absences from the United States since entry, the applicant reported that he traveled to China for the duration of one month or less in August 1987 and October 1994. At part #33 of the application, where applicants are asked to list their employment in the United States since entry, the applicant listed his first employment in the United States as a cook with [REDACTED] in Perth Amboy, New Jersey from June 2002 until April 2004.

The applicant failed to file with his application any evidence to corroborate his claim of continuous residence in the United States during the requisite period. On February 17, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident

Status. The applicant was afforded thirty (30) days to submit additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant responded to the NOID with copies of two photographs of a man standing at unidentified locations. The applicant identified these photographs as “1986 in Los Angeles, CA” and “1987 in New Jersey.”

These photographs are not probative evidence of the applicant’s residence in the United States during the requisite period. First, the applicant has failed to provide any concrete information regarding these photos other than their date. There is no indication that the person featured in the photos is the applicant. There is also no information on the specific location of these photos. Second, the reliability of the date of these photos is based on the applicant’s testimony alone. There is no evidence that the photos were dated stamped upon the date they were taken or developed. For the applicant to meet his burden of proof, he must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Third, these photos are copies of originals and therefore are subject to alteration. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. *Id.* Finally, even if the photos satisfied the delineated criteria, they do not relate to the applicant’s residence in the United States for the *entire* requisite period.

The director denied the application for temporary residence on June 14, 2006. In denying the application the director noted that the copies of the two photographs do not offer any proof that the applicant entered the United States prior to January 1, 1982 and resided in an unlawful status since such date. The director determined that the applicant failed to provide sufficient evidence to establish his claim. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that pursuant to the CSS/Newman Settlement Agreements, CIS must take into account the passage of time and the difficulties in obtaining corroborative documentation of unlawful residence. The applicant further asserts that photographs are *prima facie* evidence and CIS has failed to consider all of the relevant documents received.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. 8 C.F.R.

§ 245a.2(d)(5). The application of the “preponderance of the evidence” standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80. The applicant asserts that his photographs are prima facie evidence of his residence in the United States. As noted above, these photographs, when viewed either individually or within the totality of the evidence do not establish the applicant’s residence in the United States during the requisite period. The applicant notes that the CSS/Newman Settlement Agreements stipulate that CIS must take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence. However, the regulations require that for an applicant to meet his burden of proof he must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Hence, the applicant’s Form I-687 and testimony are not alone sufficient evidence to establish eligibility. *See Matter of E-M-*, 20 I&N Dec. at 80. The applicant further asserts that CIS has failed to adequately consider all relevant documents received. A review of the applicant’s record shows that the photograph copies are the only relevant documents CIS has received. Pursuant to 8 § C.F.R.245a.2(d)(3), the applicant has been given the opportunity to submit a broad range of documents to corroborate his testimony. Nevertheless, the applicant has failed to provide on appeal any additional evidence of his residence in the United States.

Moreover, the record contains information that is inconsistent with the applicant’s assertion that he has continuously resided in the United States during the requisite period. On February 3, 1995, the applicant filed a Form I-589, Application for Asylum. The applicant signed this application under penalty of perjury certifying that the application is true and correct. The applicant provided on part #14 of this application that he last entered the United States on November 9, 1993. This information is inconsistent with the applicant’s Form I-687, which provides that he has had two absences from the United States for the duration of one month or less in August 1987 and October 1994. There is no indication on the applicant’s Form I-687 that he traveled to the United States in November 1993. Although this inconsistency is not material to the applicant’s residence in the United States during the requisite period, it does call into question the veracity of his overall testimony.

Notably, the applicant filed with his application for asylum, a signed Form G-325A, Biographic Information Sheet. The form requests applicants to provide their last address outside the United States of more than one year. The applicant responded that he resided in Pukou Town, [REDACTED], Fujian, China from August 1973 until August 1993. This response is inconsistent with the applicant’s Form I-687, which provides that he resided in New York, New York from December 1981 until June 2002. This inconsistency is material to the applicant’s claim of continuous residence in the United States during the requisite period.

The inconsistencies found in the applicant’s record seriously undermine the credibility of his claim of residence in the United States for the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Any attempt to explain or reconcile such inconsistencies

will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* As discussed, the applicant has failed to submit any independent objective evidence of his residence in the United States.

In conclusion, 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 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 entire 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.