



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-062-18724

Office: NATIONAL BENEFITS CENTER

Date: MAR 27 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. 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 District 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 that he has lost through the years, receipts and other documents that would demonstrate his presence in the United States for the duration of the requisite period. He further asserts that he has fully complied with the director's request for additional evidence, and has submitted affidavits and other documentation sufficient to establish his eligibility for temporary residence status. He submits additional evidence on appeal.

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 December 1, 2005. The applicant claims on his notice of appeal to have entered the United States initially in January of 1982. At part #16 of the Form I-687 application where applicants were asked to indicate when they last entered the United States, the applicant indicated 1986. It is further noted that at part #32 of his Form I-687 application where the applicants are asked to list all absences from the United States, the applicant didn't list any. It is also noted that on the applicant's Form I-817, Application for Voluntary Departure Under the Family Unity Program, dated November 9, 1994, he indicated that his day of arrival in the United States was February of 1988. On his Form I-817 application dated November 25, 1997, the applicant indicated his date of arrival in the United States to have been 1985. In addition, it was indicated on the Form I-130, Petition for Alien Relative, at part C.14, dated December 5, 1997, that the applicant arrived in the United States without inspection in 1985. These inconsistencies call into question the veracity of the applicant's statements and the credibility of the evidence submitted on his behalf. 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 the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the multiple inconsistencies.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a photocopy of his Social Security Statement and tax forms for various years between 1992 and 2004, photocopies of pay stubs from various employers dated between the years 1995 and 1998, a photocopy of an electric bill dated October 4, 2005, a payment receipt from Washington Regional Hospital dated May 31, 2005, photocopies of previously issued Employee Authorization Cards, and photocopies of employee identification cards from various farms and ranches and his Mexican birth certificate. The applicant also submitted affidavits from [REDACTED], [REDACTED], and [REDACTED], all of who attested to knowing the applicant subsequent to January 1, 1982.

In denying the application the director determined that neither the documentary evidence nor the affidavits submitted by the applicant was sufficient to demonstrate his residence in the United States since prior to January 1, 1982.

On appeal, the applicant requests that his application be reconsidered. The applicant asserts that he has lost receipts and other documents through the years that would demonstrate his presence in the United States for the duration of the requisite period. He further asserts that he has fully complied with the director's request for additional evidence, and has submitted affidavits and other documentation sufficient to establish his eligibility for temporary residence status. The applicant resubmitted copies of the affidavits from [REDACTED], and [REDACTED]

The applicant also submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since January of 1982, that they met in California as neighbors, and that they have been friends ever since. Here, there is no evidence in the record to demonstrate that the affiant has firsthand knowledge of the applicant's circumstances and whereabouts throughout the requisite period. The affiants fail to demonstrate the frequency in which they saw the applicant. The affiants has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affiants have not provided evidence that they themselves were present in the United States during the requisite period. Because these affidavits are significantly lacking in detail, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In summary, the applicant has failed to address and overcome the issues raised by the director in the NOID and in her final decision dated September 27, 2006. The documentary evidence submitted by the applicant is all dated subsequent to the requisite period, and the attestations he initially submitted do not corroborate his claim of residence in the United States. The affidavits submitted by the applicant on appeal are lacking in detail and are insufficient to substantiate his claim of residence in the United States since before January 1, 1982. It is also noted that the applicant failed to list on his Form I-687 application at part #30 any address in the United States before 1988; and at part #33 he did not list any employment history.

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 on his applications 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.