



U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC 04 317 10133

Office: NEW YORK

Date:

MAR 31 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 [or Records] 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, New York, and 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. Specifically, the director noted that there were discrepancies between the information provided by the applicant at his interview and the information previously provided by him on his Form I-687 application. In light of the noted discrepancy, the director found that the veracity of the applicant's testimony is dubious and 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 challenges one of the director's findings, asserting that the director's statements are inaccurate.

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 Immigration and Nationality Act (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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden. In support of the Form I-687, the applicant provided two affidavits dated July 29, 2004. The affiant named [REDACTED] stated that she has known the applicant since prior to December 31, 1981. However, [REDACTED] did not specify how and where she first met the applicant, nor did she provide any information about any further encounters she may have had with the applicant through the statutory period. [REDACTED], the other affiant only attested to his knowledge of the applicant's travel abroad after November 6, 1986. Although this statement may explain why the applicant did not file a Form I-687 within the initial filing period, it does not address the relevant issue of the applicant's continuous unlawful residence during the statutory period.

The record shows that the applicant provided further testimony at an interview that took place on March 23, 2006. After comparing the applicant's interview responses and the information previously provided on his Form I-687, the director determined that the applicant's information was inconsistent. Accordingly, the director issued a notice of intent to deny (NOID) on July 11, 2006. First, the director noted that at the interview, the applicant claimed that he resided at [REDACTED] from October 1981 until January 1987. However, on his Form I-687, the applicant stated that he resided at that address until July 1994. Next, the director focused on the applicant's 1987 departure from the United States, which the applicant indicated was from January to April 1987. The director determined that this absence was longer than the 45 days allowed by regulation.

In response, the applicant provided a written explanation dated August 5, 2006 in which he denied having provided inconsistent testimony at the interview. Rather, he blamed the apparent inconsistency on the interpreter, stating that the interpreter failed to reiterate the information as provided by the applicant. However, there is no evidence to support the applicant's allegation. Moreover, the AAO cannot overlook

the applicant's failure to provide evidence to support his claim. As previously pointed out, neither of the affiant whose testimonies were submitted in support of the Form I-687 provided statements that directly corroborate the applicant's claim. With regard to the prolonged absence, the applicant stated that the reason for his trip was the illness of his brother. The applicant claimed that he remained with his brother, caring for him until he passed away in Africa. In support of this claim, the applicant provided a translated document titled "Bulletin of Death" issued as evidence of the death that took place on February 15, 1987. In light of this document, it is unclear why the applicant would have remained outside of the United States past the date of his brother's death, which took place approximately 45 days prior to the applicant's alleged return to the United States. Moreover, according to the information provided in No. 32 of the Form I-687, the applicant's 1987 departure was to Canada, not to Africa where the applicant's brother was located. Thus, in addition to having provided inconsistent information regarding the place and purpose of his visit outside of the United States, the applicant has further impugned his own credibility as well as the validity of his claim.

On August 15, 2006, the director denied the application on the basis of the applicant's failure to provide sufficient documentation in support of his claim. More specifically, the director noted the inconsistency regarding the length of the applicant's residence at [REDACTED], noting that this discrepancy calls into question the veracity of the applicant's entire testimony.

On appeal, the applicant strongly objects to the director's adverse decision, claiming that the director did not properly reiterate the information provided by the applicant in the Form I-687. Specifically, the applicant notes that in the denial, the director improperly stated that the applicant claimed to have resided at [REDACTED] until July 1997 when, in fact, the Form I-687 shows that the applicant claimed to have resided at that address until July 1994. While the AAO acknowledges that the director erred in restating information provided by the applicant on his Form I-687, the director's error was clearly typographical and is immaterial to an otherwise proper decision. The director properly reiterated the applicant's claim in the NOID, thereby strongly suggesting that the error made in restating this information in the final notice of decision was unintentional, aside from its being immaterial to the basis for denial.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted two attestations from people who did not attest to the applicant's continuous residence in the United States during the statutory period. The absence of sufficiently detailed supporting 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 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.