



U.S. Citizenship
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Services

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FILE: 
MSC-04-331-10223

Office: NEW YORK

Date: **MAY 02 2008**

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. 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.

for *Michael T. Kelly*
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 District. 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 August 26, 2004 (together, the 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 noting that “the information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” In addition, the director noted that she was unable to contact one of the applicant’s affiants and that the applicant failed to submit court dispositions for his arrests in 2002. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a written brief or statement. The applicant submitted seven court dispositions for arrests in 2002. On the Form I-694, the applicant states that “due to the passage of time,” it is difficult to “submit corroborative evidence of unlawful residence.” The applicant reaffirms that he “entered the U.S. prior to January 1, 1982 and stayed during the statutory period.” As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 26, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] New York, New York, from 1981 to 1985. At part #33, he listed his first and only employment in the United States as a self-employed vendor/peddler in New York, New York, from 1981 to 2004. At part #32, the applicant listed three absences from the United States since entry, but did not list any absences during the requisite period.¹ At part #31, the applicant did not list any affiliations or associations.

The applicant has provided two affidavits; a letter from his treating physician; four forms listing the names and personal information of the applicant's acquaintances; court dispositions for the applicant's arrests; copies of the applicant's passports issued on July 14, 1998 and on March 22, 2005; a copy of the applicant's visitor's visa issued on May 20, 1999 in Dakar; and a copy of the applicant's Form I-94. The applicant's passports are evidence of the applicant's identity, but do not demonstrate that he entered before 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period and is not probative of residence before that date. The following evidence relates to the requisite period:

- A form-letter "Affidavit of Witness" from [REDACTED] dated January 16, 2006. The declarant lives in New York, New York and states that he has known the applicant since 1981. The declarant states that he met the applicant on [REDACTED] [and] [REDACTED]. The declarant also states that he "worked as a bike messenger and would see [the applicant] selling merchandise on the corner of 27th Street and 6th Avenue." The declarant adds that he and the applicant would "always speak to each other everyday" until they became friends. Although the declarant states that he has known the applicant for 25 years, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A form-letter "Affidavit of Witness" from [REDACTED] dated February 10, 2006. The declarant lives in New York, New York and states that he has known the applicant since 1981. The declarant states that he met the applicant on "[REDACTED] [and] [REDACTED]". The declarant also states that he and the applicant "sold merchandise together on 50th Street and 7th Avenue." The declarant adds that he and the applicant would "always

¹ The record of proceeding contains interview notes from the applicant's January 17, 2006 interview. The notes list one trip during the requisite period. According to the interview notes, the applicant was absent from the United States from June 1986 to August 1986.

“speak to each other everyday” until they became friends. Although the declarant states that he has known the applicant for 25 years, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- Four forms for [REDACTED] and [REDACTED] listing their name, date of birth, place of birth and current address. These forms do not provide any information in support of the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period. Given these deficiencies, these statement do not provide any probative value in support of the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

A letter on Harlem Hospital Center letterhead from [REDACTED] dated November 15, 2005. The letter has a subject line that states “Re: January 82.” The declarant states that the applicant “requires physical therapy to work on his motor milestones. He has mild gross motor developmental delay. He is also requiring occupational, feeding, nutrition and speech/language therapy. He was originally brought to me because he had the flu.” Although the letter is from a treating physician, the declarant does not include the date(s) in which he met with the applicant. Although the subject line states “Re: January 82,” there is no mention of the date(s) in which the applicant was seen by the declarant or if the declarant received physical therapy after seeing the declarant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant’s claim have been found to lack credibility or to have minimal probative value as evidence of the applicant’s residence and presence in the United States for the requisite period. Although the applicant has submitted letters and affidavits, they all lack sufficient detail to be found credible or probative.

The remaining evidence in the record is comprised of the applicant’s statements, in which he claims to have entered the United States prior to January 1, 1982 and to have resided for the duration of the requisite period in New York. 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 not supported by any credible evidence in the record.

Finally, the record of proceeding contains the following court dispositions for arrests in 2002 and 2005:

- The record reflects that on January 12, 2002, the applicant was arrested by the New York Police Department. On April 3, 2002, the applicant pled guilty and received a conditional discharge of one year with 10 days of community service in the Criminal Court of the City of New York. (Docket No. [REDACTED])
- The record reflects that on February 17, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the applicant pled guilty and received a conditional discharge of one year with 10 days of community service in the Criminal Court of the City of New York. (Docket No. [REDACTED])

The record reflects that on June 1, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the charges were dismissed in the Criminal Court of the City of New York. (Docket No. [REDACTED])

- The record reflects that on August 6, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the charges were dismissed in the Criminal Court of the City of New York. (Docket No. [REDACTED])
- The record reflects that on October 19, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the charges were dismissed in the Criminal Court of the City of New York. (Docket No. [REDACTED])

The record reflects that on October 29, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the charges were dismissed in the Criminal Court of the City of New York. (Docket No. [REDACTED])

- The record reflects that on November 10, 2002, the applicant was arrested by the New York Police Department. On March 20, 2003, the charges were dismissed in the Criminal Court of the City of New York. (Docket No. [REDACTED])
- The record reflects that on August 3, 2005, the applicant was arrested by the New York Police Department. On January 24, 2006, the charges were dismissed under speedy trial provisions in the Criminal Court of the City of New York. (Docket No. [REDACTED])

Pursuant to 8 C.F.R. § 245a.18(a)(1), three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. However, there is no evidence in the record of proceeding that the applicant has been convicted for three misdemeanor offenses. These convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The director issued a notice of intent to deny (NOID) on January 25, 2006. The director denied the application for temporary residence on August 1, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to

January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant did not submit any additional evidence in support of the applicant's claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981. 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 not supported by any credible evidence in the record.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 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 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.