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U.S. Citizenship
and Immigration
Services

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FILE: MSC-05-272-11086

Office: CHARLESTON

Date: MAY 06 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. 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, Charleston. 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 never received a notice of intent to deny or a request for evidence. The applicant states that he requires a time period of six to nine months to obtain corroborating documents.

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).

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) 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 June 29, 2005. 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 showed his first address in the United States to be in Columbia, South Carolina from July 2000 until the present time. At part #33, he showed his first employment in the United States to be for C [REDACTED] in Ft. Pierce, Florida from September 1981 until February 1988.

At issue in this proceeding is the applicant’s 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). Pursuant to the CSS/Newman Settlement Agreements, the term “until the date of filing” 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. The applicant failed to show on his Form I-687 application his residential address in the United

States during this requisite period. As a result, the Form I-687 application does not establish the applicant's prima facie eligibility for temporary resident status.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 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. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted as corroborating evidence two affidavits from [REDACTED], dated May 25, 2005.

The affidavit from [REDACTED] entitled, Verification of Residence, provides that the applicant was his tenant at [REDACTED] Ft. Pierce, Florida from September 1981 until February 1988. This affidavit contains several apparent deficiencies. The affidavit states that [REDACTED] owned and/or operated various residential rental properties in Fort Pierce, Florida from 1980 to 1990. The affidavit further states that there are no available records related to the applicant's residence at this address. The affidavit fails to provide any information on the source of Mr. Porter's recollection of the applicant's residence at this address. It is reasonable to expect this information since the affidavit is dated May 25, 2005, over 20 years after the applicant's purported residence at [REDACTED]. Notably, the applicant has not listed on his Form I-687 application this address as his residence during the requisite period. Furthermore, the affidavit does not contain any information to readily verify its content. Pursuant to 8 C.F.R. § 245a.2(d), applications submitted with unverifiable documentation may be denied. The affidavit does not contain a telephone number to contact [REDACTED]. Nor does the affidavit have any documentary evidence attached to show that [REDACTED] owned and/or managed property at [REDACTED]. Given the numerous deficiencies in this affidavit, it is of little probative value as credible evidence of the applicant's residence in the United States during the requisite period.

The affidavit from [REDACTED] entitled, Verification of Employment, provides that the applicant was his employee from September 1981 until February 1988. The affidavit states that the applicant held the position of laborer in citrus harvesting with [REDACTED] and was paid on a weekly basis. The affidavit similarly contains several apparent deficiencies. The affidavit states that there are no available records related to the applicant's employment with this company. The affidavit fails to provide any information on the source of [REDACTED] recollection of the applicant's employment. It is reasonable to expect this information since the affidavit is dated May 25, 2005, over 20 years after the applicant's purported employment with [REDACTED]. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide, in part, that if employment records are unavailable, the employer should provide an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable. This affidavit

form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. This affidavit fails to conform to these delineated guidelines. Furthermore, the affidavit does not contain any information to readily verify its content. Pursuant to 8 C.F.R. § 245a.2(d), applications submitted with unverifiable documentation may be denied. The affidavit does not contain a telephone number to contact [REDACTED]. Nor does the affidavit have any documentary evidence attached to show the validity of the company [REDACTED]. Given these numerous deficiencies, this affidavit is also of little probative value as credible evidence of the applicant's residence in the United States during the requisite period.

The director issued a denial notice on June 30, 2006. In denying the application, the director found that during the applicant's interview on January 26, 2005, he testified that he entered the United States on a B-2 visitor visa in 1981 and departed in 1987. The director determined that this testimony is inconsistent with an affidavit from [REDACTED] which provides that the applicant was employed until February 1988. The director determined that the inconsistencies between the applicant's Form I-687 application, affidavits from M [REDACTED] and his testimony draw into question his supporting documentation. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that he did not receive a notice of intent to deny. The applicant states that there was no formal request for evidence. The applicant notes that he received the denial notice, dated June 30, 2006, on July 24, 2006. The applicant states that during his interview he advised the adjudication officer that he requires additional time to obtain corroborating evidence. The applicant notes that he would need six to nine months to obtain additional evidence. The applicant states that he is not in a position to provide "such information" because he is not aware of the type of the information the office requires.

The applicant's assertion that he is appealing the decision because the director failed to issue a notice of intent to deny or a request for evidence is in error. The legalization regulations at 8 C.F.R. § 245a.2 do not require the director to issue a notice of intent to deny or a request for evidence. According to 8 C.F.R. § 245a.2(o), the applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. In this case, the director notified the applicant of the inconsistencies between his testimony and documentary evidence. However, on appeal, the applicant did not address these inconsistencies nor did he submit any additional evidence. The applicant asserts that he received the denial notice, dated June 30, 2006, on July 24, 2006. The applicant states, "[t]his does not give me even close to 30 days." The applicant failed to show on appeal that the envelope in which the notice of denial was mailed bears a postmark subsequent to June 30, 2006. Furthermore, the Form I-694, Notice of Appeal, allows the applicant an additional 30 calendar days to submit a brief after the appeal is properly filed. The applicant failed to take the opportunity to submit a brief and/or additional evidence within 30 days after the filing of his Form I-694. It should be noted that the applicant's Form I-687 application was filed on June 29, 2005, more than one year prior to the date he filed his Form I-694. Therefore, the applicant had a significant period of time to obtain and submit

additional corroborating evidence on appeal. Finally, the applicant's assertion that he is not aware of the type of information the office requires is unfounded. The director's denial notice clearly states the basis for denial. The director's denial notice illustrates the applicant's failure to provide credible evidence of continuous residence in the United States during the 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.