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U.S. Citizenship
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MAY 19 2008

FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

MSC-05-127-11422

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 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. Viemann 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, Los Angeles, California. 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 resided and worked in the United States under the alias of Victor Rene Amiel with a separate social security number, not his own social security number. He stated that he has submitted copies of his taxes, personal federal income tax returns, and Wage and Tax Statements (Form W-2). He states that he has always filed his tax returns and he has up-dated his addresses with the U.S. Internal Revenue Service.

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 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 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 or her 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 February 4, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at [REDACTED] Los Angeles, California from January 1981 to June 1985, at [REDACTED] Los Angeles, California from June 1985 to April 1986, and at [REDACTED], Los Angeles, California from April 1986 to September 1988. Similarly, at part #33, he showed his first employment in the United States to be for [REDACTED] Burbank, California from February 1981 to December 1988.

According to the evidence in the record, the applicant applied for status as a permanent resident pursuant to section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000 (MSC 03-249-63501). In his LIFE Act application, as in the instant application, the applicant claimed to have used the identity of another person, [REDACTED]. The applicant claimed he has used two social security numbers, his own, [REDACTED] and [REDACTED]'s social security number (the numbers are obscured for privacy purposes).

The applicant submitted his birth certificate and the following documentation:

- Partial and complete U.S. federal income tax returns (Form 1040A) for 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988; all copies are obscured by a photocopy of a W-2 statement for each year across the first page of each return:

The W-2 statements all have the social security number of [REDACTED] number [REDACTED]. W-2 statements with that number in the name of [REDACTED], Los Angeles, California, are attached to the tax returns, also in the name of [REDACTED] and his spouse, for years 1981, 1982, 1983, 1984, and 1985.

The tax returns submitted by the applicant for the years 1986, 1987 and 1988 have attached W-2 statements in the name of [REDACTED], Los Angeles, California.

According to the Form I-687, the applicant resided at the above [REDACTED] address from June 1985 to April 1986. Thereafter, according to the Form I-687, the applicant resided at [REDACTED] Los Angeles, California, April 1986 to September 1988, and at [REDACTED] Los Angeles, California from September 1988 to May 1989. The W-2 statements submitted by the applicant in the name of [REDACTED] state only one address for years 1986, 1987 and 1988, [REDACTED] Los Angeles, California. The applicant has not resolved the inconsistencies in the addresses of his I-687 and his purported W-2 statements.

According to the record of proceeding, the director issued a Form I-72, Request for Evidence dated July 26, 2005, requesting additional documentation to establish eligibility for temporary residence status. In response, the applicant submitted a Form SSA-2458 dated August 15, 2005, that stated the applicant requested that the Social Security administration combine all of the aforementioned W-2 statement earnings into the applicant's personal earnings history and copies of U.S. federal tax returns for 1986 and 1987 with W-2 statements already submitted.

The director denied the application for temporary residence on May 25, 2006. In denying the application, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, but emphasizes that he was nervous during his interview with a CIS officer and may have confused some dates.

The applicant has not submitted an evidence from the employer, [REDACTED] establishing that the applicant and [REDACTED] are one and the same person. The applicant has failed to establish that he used an alias.

In this case, there is insufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the 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.

According to an FBI report based upon the applicant's fingerprints, the Los Angeles Police Department arrested him on November 17, 1996 and charged him with *spouse beating*. According to the report, the applicant was convicted on the charge of *inflicting corporal injury on a spouse or cohabitant* in violation of section 273.5(a) of the California Penal Code. In the absence of court documents, the AAO will not make a finding of inadmissibility based upon this conviction.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.