



U.S. Citizenship
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FILE:

MSC 06 098 20581

Office: LOS ANGELES

Date:

NOV 24 2008

IN RE: Applicant:



APPLICATION:

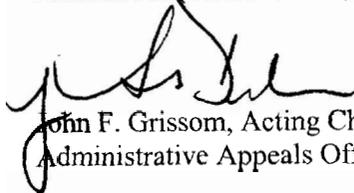
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


John F. Grissom, Acting 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. 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. Specifically, the director noted that the applicant had registered the births of his two children in Mexico in 1983 and 1985 respectively. The director found that this contradicted the applicant's testimony that he had departed the United States on only one occasion (September of 1987) since his asserted arrival in 1981. 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 established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted. Specifically, the applicant states he traveled outside the United States on only one occasion (1987), that his father represented him when his children's births were registered in Mexico, and that his wife departed the United States and traveled to Mexico for the births of his children.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

Witness Statements

- [REDACTED] submitted a statement dated January 8, 2007 that is neither sworn to nor notarized, wherein [REDACTED] states that he has known of the applicant's presence in the United States since 1984. [REDACTED] states that he and the applicant are friends, having met at a social event, and that the two maintain contact on the telephone and occasionally see each other.

- [REDACTED] submitted a statement dated January 8, 2007 that is neither sworn to nor notarized, wherein [REDACTED] states that he knows that the applicant has been in the United States since 1981. [REDACTED] states that the applicant married his sister in Mexico in 1980, that he was first introduced to the applicant in Encino, California by mutual friends, and that the two see each other at family gatherings and on holidays.
- [REDACTED] submitted a statement dated December 23, 2005 that is neither sworn to nor notarized, wherein [REDACTED] states that he has known of the applicant's presence in the United States since 1981. [REDACTED] states that the applicant returned to Mexico in 1987 for a family visit, that upon the applicant's return to the United States he told the applicant about the amnesty program, and that he accompanied the applicant to apply for amnesty but the applicant was not permitted to apply because he had traveled outside the United States in 1987.
- [REDACTED] submitted a statement dated December 12, 2005 that is neither sworn to nor notarized, wherein [REDACTED] states that he has known of the applicant's presence in the United States since 1981. [REDACTED] states that he met the applicant in a social setting when the applicant was living in North Hollywood, CA, and that the two are friends. According to information provided by the applicant on the Form I-687, the applicant lived in Hollywood, CA from 1988 to 1991.
- [REDACTED] submitted a notarized statement dated December 12, 2005 wherein he states that he has known of the applicant's presence in the United States since 1986. [REDACTED] states that he met the applicant when he purchased from the applicant a water filter, and that the applicant was then living in Indio, CA. Since meeting, the two have remained friends.
- [REDACTED] submitted a notarized statement dated December 15, 2005 wherein he states that he has known of the applicant's presence in the United States since 1987 when the two met at a social gathering. [REDACTED] states that the two have remained friends since that time.
- [REDACTED] submitted a notarized statement dated December 22, 2005 wherein she states that she has known of the applicant's presence in the United States since 1986. Ms. [REDACTED] states that the applicant is her husband's brother-in-law, and that the applicant lived in her home in Hollywood, CA until 1991.
- [REDACTED] submitted a notarized statement dated December 22, 2005 wherein he states that he has known of the applicant's presence in the United States since 1981, and that the applicant is his brother-in-law. [REDACTED] states that the applicant lived with him in Hollywood, CA, and that he now sees the applicant at social gatherings and special events, while maintaining further contact on the telephone.

██████████ submitted a notarized statement dated December 12, 2005 wherein he states that he has known of the applicant's presence in the United States since 1988 when he purchased a water filter from the applicant. ██████████ states that the two became friends and have maintained that friendship through the years.

- ██████████ submitted a statement dated December 12, 2005 that is neither notarized nor sworn to wherein he states that he has known of the applicant's presence in the United States since September of 1981. ██████████ states that the applicant lived with him in Encino, CA in 1981, and that the two have remained friends since that time.
- ██████████ submitted a statement dated December 12, 2005 that is neither sworn to nor notarized wherein he states that he has known of the applicant's presence in the United States since 1982. ██████████ states that the two met at a social gathering in North Hollywood, CA and have remained friends since that time.

██████████ submitted a notarized statement dated December 12, 2005 wherein she states that she has known of the applicant's presence in the United States since 1987 when her husband purchased a water filter from the applicant. ██████████ states that she and her husband have maintained a friendship with the applicant since that time.

██████████ submitted a notarized statement dated December 12, 2005 wherein he states that he has known of the applicant's presence in the United States since 1987 when he purchased a water filter from the applicant. ██████████ states that the two have remained friends since that time.

Applicant Statement

- The applicant submitted a statement that is neither sworn to nor notarized wherein he states that he entered the United States without inspection in 1981. He states that he traveled to Mexico for a family visit and upon his return to the United States he learned of the amnesty program. The applicant states that he attempted to apply for amnesty but was not allowed to do so after informing an immigration officer of his 1987 departure.

Other Evidence

The applicant submitted copies of four photographs. The record does not disclose where the photographs were taken, but markings on the reverse side of the photograph copies bear a printed date of 1984.

- The applicant submitted a copy of his 1986 California driver's license, and a copy of a Mundial Construction Corp. identification card which is undated.

- The applicant submitted documentation from the Van Nuys Community Adult School which establishes that the applicant was enrolled at that institution on August 12, 2006.

The applicant provides no additional evidence relevant to the requisite period in support of his application.

Although the applicant has submitted numerous witness statements and his own statement in support of his application, he has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone, but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The witness statements submitted state generally that the witnesses have known the applicant for various periods of time, and make a positive character reference on the applicant's behalf. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness statements must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements are not sufficiently detailed to establish the assertions made. Therefore, they have little probative value.

Likewise, the statement provided by the applicant lacks sufficient detail to establish that the applicant has continuously resided in the United States for the duration of the requisite period. Further, and as previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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 his claim. As previously noted, 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 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.

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.