



U.S. Citizenship
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Services

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FILE:

MSC-05-138-11338

Office: NEW YORK

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 if your case was 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 Director, New York. 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 (together comprising the I-687 Application). The director denied the application, stating that the applicant had failed to provide sufficient evidence to show eligibility for the benefit sought.

On appeal, the applicant asserts that he is a legitimate CSS/Newman class member and claims that he did not receive the director's Notice of Intent to Deny (NOID), and as a consequence, could not timely respond to her request for more evidence. The applicant provides proof that he was not in the United States when the NOID was issued.

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)(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).

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, "[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 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 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 sole issue in this case is whether the applicant had provided sufficient evidence to establish by a preponderance of the evidence that he had continuously resided in the United States in an unlawful manner for the duration of the requisite period.

The applicant claims to have entered the United States in December 1981 as a 6-year-old boy. To show continuous, unlawful residence in the United States for the duration of the requisite period, he submitted two letter-affidavits from [REDACTED]. [REDACTED] stated that they have known the applicant since 1982. Neither one of them, however, provide concrete information such as the address or addresses at which the applicant lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of how and where they met him. Their brief reference to having known the applicant since 1982 or having maintained close friendship with the applicant for 22 years is not persuasive. The lack of detail does not support their claims that they have known the applicant since 1982. As stated above, to be considered probative and credible, affidavits 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 witness does, by virtue of that relationship, have knowledge of the facts alleged. *In the Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The Citizenship and Immigration Services (CIS) sent out a notice on September 16, 2005, advising the applicant to show up for an interview with an examiner and to bring all supporting

documents. The applicant showed up for the interview but did not bring any supporting documents. The director then issued a notice of intent to deny (NOID), requesting supporting documents. As indicated earlier, the burden is on the applicant to prove by a preponderance of the evidence that he is eligible for the benefit sought. Here, the applicant was given at least four opportunities to prove his eligibility by a preponderance of the evidence – first upon filing the application, secondly on the day of the interview, then in response to the NOID, and finally on appeal. His claim of not being able to respond to the NOID was not at the fault of CIS, and the applicant failed again on appeal to submit supporting documentation.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 paucity of the evidence 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.

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a **crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p)**. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record includes the following charges and convictions:

- The applicant was arrested on March 9, 2002, by the New York Police Department and subsequently charged with trademark counterfeiting in the third degree and acting as a general vendor without a proper license. On March 10, 2002, the applicant pled guilty to disorderly conduct, “a violation,” pursuant to New York Penal Law § 240.20 and received a one-year conditional discharge and a one-day community service (Docket Number: [REDACTED]). Pursuant to New York Penal Law § 10.00(3), violation means an offense for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed. For purposes of determining admissibility and eligibility of temporary resident status pursuant to Section 245A of the Act, the disorderly conduct violation in this case is a misdemeanor under 8 C.F.R. § 245a.1(o), because it is punishable for a maximum term of fifteen days;
- On March 29, 2002, the applicant was arrested again for trademark counterfeiting and acting as a general vendor without a license, pled guilty to disorderly conduct, which is a violation

pursuant to section 240.20 of the New York Penal Law and a misdemeanor under 8 C.F.R. § 245a.1(o) on March 30, 2002. The applicant received a one-year conditional discharge and a three-day community service (Docket Number: [REDACTED])

- On April 13, 2002, the applicant was arrested for acting as a general vendor without a proper license in violation of New York City Administrative Code § 20-453 in New York City and was convicted of this misdemeanor offense in the New York City Criminal Court on the same day (Docket Number: [REDACTED]) and;
- Finally, on May 11, 2003, the applicant was arrested by the New York City Police Department for violating section [REDACTED]. The applicant was found guilty of that misdemeanor offense in the New York City Criminal Court on October 9, 2003, and sentenced to a one-year conditional discharge and a one-day community service (Docket Number: [REDACTED])

Based on these criminal convictions, the applicant appears to be inadmissible as an immigrant who has been convicted of three or more misdemeanors pursuant to Section 245A(a)(4) of the Act; 8 C.F.R. § 245a.2(d)(5), and is ineligible for the temporary resident status benefit pursuant to 8 C.F.R. § 245a.2(c)(1).

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