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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC-06-08-15404

Office: LOS ANGELES

Date:

OCT 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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, 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. 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 states that he has been in the United States since 1977. He states that he has not had formal education, it is difficult for him to remember events and dates, and he was very nervous during his interview with an immigration officer. The applicant states that an individual who submitted an affidavit on his behalf also assisted with translation during the applicant's interview. The applicant expresses objection to the interviewing officer's treatment of the affiant. The applicant provides an additional affidavit in support of his application, together with copies of documents that he had already submitted.

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 December 27, 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 listed the following addresses during the requisite period: [REDACTED], [REDACTED], Oxnard, California from 1981 to 1987 and [REDACTED], Oxnard California from 1987 to 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Agriculture labor with Garden City from 1981 to 1983; and agriculture work with Nichimury Growers from 1984 to 1987.

In an attempt to establish continuous unlawful residence in this country throughout the requisite period, the applicant provided voluminous documentation. Documents relating to the requisite period include a copy of an envelope, a copy of a wage document, and multiple declarations.

The applicant submitted a copy of an envelope postmarked on a date in 1977 that is illegible, listing the applicant's return address in Arizona. This document constitutes some evidence that the applicant was present in the United States at some time during 1977.

The applicant submitted a copy of a Form W-2 Wage and Tax Statement for 1988 listing him as the employee and listing Turf Pro Landscape Maintenance as the employer. This document constitutes some evidence that the applicant performed work in the United States for some portion of 1988.

The applicant provided an affidavit from [REDACTED] stating that, to his personal knowledge, the applicant resided at the [REDACTED] address from 1981 to 1987. The affiant also stated that the applicant arrived in the United States in 1981 and the affiant rented the applicant a room at the [REDACTED] address. This affidavit lacks detail regarding how the affiant met the applicant and came to rent the room to him, how the affiant is able to date their acquaintance, and whether any records are available of the rent paid by the applicant to the affiant. As a result of this lack of detail, this affidavit will be given only minimal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided multiple affidavits from [REDACTED]. The affidavits from Mr. [REDACTED] fail to conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavits do not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. These deficiencies detract from the probative value of the affidavits. The first affidavit from Mr. [REDACTED] dated March 21, 2001, states that the applicant worked with the affiant from 1981 to 1987 in "different agricultural jobs." The affiant stated that, at that time, he was the manager for Garden City farm labor in Oxnard, California for about three years, and the applicant was a full-time employee during the farm season. The affiant stated that the applicant also worked for [REDACTED] in Oxnard as "labor," picking tomatoes and planting celery, and the affiant was the applicant's manager for four years. This affidavit fails to specifically state that the applicant resided in the United States continuously throughout the relevant period. The affidavit also lacks detail regarding when and how the affiant met the applicant, how he is able to date the beginning of their acquaintance, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, this affidavit will be given nominal weight in determining whether the applicant has established that he resided in the United States from 1981 to 1987.

[REDACTED] also provided a set of affidavits dated March 27, 2001. These affidavits indicate that the applicant worked with the affiant at Garden City farm as a farm laborer. The affiant stated that, at that time, he was the manager for Garden City farm labor in Oxnard California. The affiant stated that the applicant was a full time employee, picking vegetables during the farm season "that used to last five months." The affiant provided individual affidavits including the above information with respect to employment during 1982, 1983 and 1984. This information is

somewhat inconsistent with the applicant's Form I-687 application where he indicated that he was employed with Garden City only from 1981 to 1983. This inconsistency casts some doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, these affidavits appear to indicate that the applicant was only employed five months per year during the relevant periods, thereby failing to confirm the applicant's continuous residence throughout each year that he worked with Garden City. Lastly, the affidavits also lack detail regarding when and how the affiant met the applicant, how he is able to date the beginning of their acquaintance, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, these affidavits will be given no weight in determining whether the applicant has established that he resided in the United States during the requisite period.

provided another set of affidavits dated March 27, 2001. These affidavits indicate that the applicant worked with the affiant at Nichimury Growers farm as a farm laborer in Oxnard California. The affiant stated that, at that time, he was the manager for . The affiant stated that the applicant was a full time employee, picking tomatoes and planting celery during the farm season "that used to last almost a year." The affiant provided individual affidavits including the above information with respect to employment during 1985 and 1986. These affidavits lack detail regarding when and how the affiant met the applicant, how he is able to date the beginning of their acquaintance, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, these affidavits will be given nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided another affidavit from dated December 5, 2005. The affiant stated that he has known the applicant for 26 years, which would indicate that he met the applicant in approximately 1979. Later in the same affidavit, the affiant stated that he has known the applicant "from 1981 to present." This inconsistency casts some doubt on the affiant's knowledge of the applicant, and on the affiant's ability to confirm the applicant's residence in the United States during the requisite period. The affiant also stated that the applicant worked with him from 1981 to 1987 in "different agricultural jobs." He stated that, at that time, he was the manager for Garden City Farm Labor in Oxnard, California for about three years and the applicant was a full time employee during the farm season. He stated that the applicant also worked for in Oxnard as a laborer, picking tomatoes and planting celery. The affiant stated that he was the applicant's manager for four years. This affidavit fails to specifically state that the applicant resided in the United States continuously throughout the requisite period. The affidavit also lacks detail regarding how the affiant met the applicant, how he is able to date the beginning of their acquaintance, their frequency of contact, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, this affidavit will be given nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

In denying the application the director concluded 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.

On appeal, the applicant states that he has been in the United States since 1977. He states that he has not had formal education, it is difficult for him to remember events and dates, and he was very nervous during his interview with an immigration officer. The applicant states that an individual who submitted an affidavit on his behalf also assisted with translation during the applicant's interview. The applicant expresses objection to the interviewing officer's treatment of the affiant. The applicant provides an additional affidavit in support of his application, together with copies of documents that he had already submitted.

The affidavit from [REDACTED], dated February 27, 2007, states that the affiant has known the applicant for 26 years. The affiant stated that the applicant arrived in the United States in 1981 and rented a room in her house at the [REDACTED] address. This affidavit fails to state that the applicant resided in the United States at any time other than in 1981. In addition, it fails to include information regarding how the affiant met the applicant, how he came to be living with her, how she dates the beginning of their acquaintance, and whether records are available of the rent he paid to her. As a result of these deficiencies, this affidavit will be given nominal weight in determining whether the applicant has established that he resided in the United States throughout the requisite period.

In summary, the applicant has provided documents indicating that he was present in the United States during 1977 and 1988. He has submitted affidavits that fail to state that he continuously resided in the United States during the relevant periods, lack sufficient detail, are internally inconsistent, or are inconsistent with his statements on his Form I-687 application. The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictions between the applicant's Form I-687 and the documents he submitted, and given his 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 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.

It is noted that the Form I-694 submitted by the applicant provided contact information for an individual identified as [REDACTED]. According to 8 C.F.R. § 292.4(a), an appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. A notice of appearance entered in proceedings must be signed by the applicant to authorize representation in order for the appearance to be recognized by Citizenship and Immigration Services. The record does not contain a Form G-28 Notice of Entry of Appearance as Attorney or Representative signed by the applicant and [REDACTED].

The AAO sent a notice to [REDACTED] on September 12, 2008 requesting that a copy of Form G-28 Notice of Entry of Appearance as Attorney or Representative, signed by the applicant and [REDACTED], be submitted to the AAO within five business days. More than two weeks have passed since the issuance of the notice, and the AAO has not received a response. As a result, the record will be considered complete. The record does not contain a Form G-28 establishing [REDACTED] authorization to serve as the applicant's representative. Therefore, her representation will not be recognized by the AAO.

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