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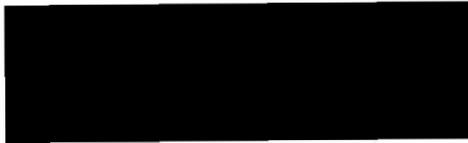


FILE: MSC-06-098-28021

Office: LOS ANGELES

Date: SEP 05 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, 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 asserts that he has been in the United States since September of 1981 and worked as a laborer from 1981 to 1989. He submits evidence on appeal that had previously been provided.

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. See 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 January 6, 2006. 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 [REDACTED] Norwalk, California. He did not include his dates of residency. Similarly, at part #33, he listed his only employment in the United States to have been as a carpenter in Wilmington, California, from October of 1989 to January of 2006.

In response to the director’s Notice of Intent to Deny (NOID), the applicant stated that he has been in the United States since December 16, 1981, and that he left the country to visit his wife and children in Mexico in December of 1987 because he had not seen them since December of 1981.

The applicant submitted the following evidence:

- An affidavit from [REDACTED] in which he stated that he had been acquainted with the applicant and that to the best of his knowledge, the applicant resided in the United States in Portland, Oregon from May of 1981 to August of 1981.
- An affidavit from [REDACTED] in which he stated that he had been acquainted with the applicant and that to the best of his knowledge, the applicant resided in the United States in Portland, Oregon from May of 1981 to August of 1981.

Here, the affiant's statements are inconsistent with the information provided by the applicant in his I-687 application at part #30 where he did not list any Portland, Oregon address as his residence from May of 1981 to August of 1981. It is also noted that the affiant's statements are inconsistent with the applicant's statement made in response to the NOID where the applicant indicated that he entered the United States on December 16, 1981. There has been no explanation given for the multiple inconsistencies. Because the affidavits are inconsistent with statements made by the applicant, they can be afforded little weight in establishing the applicant's residency in the United States throughout the requisite period.

The applicant also submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since November of 1981 and that they have become good friends and keeping in contact and maintaining communication with each other since. He also stated that they are both members of the United Brotherhood of Carpenters & Joiners of America.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since October of 1981 when he met him at church. He also stated that they have become good friends and have maintained communications with one another since then.
- A fill-in-the-blank affidavit dated February 18, 2003 from [REDACTED] in which he stated that he met the applicant at work and that the applicant resided in Los Angeles, California from September of 1981 to June of 1995.

The affiants' statements are inconsistent with the applicant's statements on his I-687 application and in response to the NOID where the applicant indicates he entered the United States in December of 1981. The affiant's statements are also inconsistent with statements made by [REDACTED] and [REDACTED] where they have stated that the applicant resided in Portland, Oregon in 1981. The inconsistencies call into question the affiants' ability to confirm that the applicant resided in the United States during the requisite period. Because the affidavits are inconsistent with statements made by the applicant, they can be afforded only minimal weight in establishing the applicant's residence in the United States since before January 1, 1982.

The applicant also submitted a fill-in-the-blank affidavit dated March 13, 2003 from [REDACTED] in which he stated that he met the applicant at a family reunion, and that since then they have become good friends. He also stated that he has personal knowledge of the applicant residing in Los Angeles, California since December of 1981. The affiant fails to specify when he met the applicant. He also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States since before January 1, 1982.

In denying the application the director noted that the applicant had failed to submit sufficient evidence of his continuous residence.

On appeal, the applicant asserts that he came to the United States for the first time in September of 1981 and that he was employed as a day laborer from 1981 to 1989. He states that he did not declare income during that period. The applicant also asserts that he was paid in cash for his labor and that he has submitted all of the evidence that he has. The applicant resubmits the affidavits from [REDACTED] and [REDACTED] on appeal.

In the instant case, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's denial. Although the applicant asserts on appeal that he initially arrived in the United States in September of 1981, he has failed to submit sufficient evidence to substantiate this claim, or to explain the multiple inconsistencies found in the record.

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 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 applicant's contradictory statements and his reliance upon documents that are inconsistent with his statements and that are lacking in detail, 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.

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