



U.S. Citizenship
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FILE: [Redacted]
MSC 05 045 11341

Office: LOS ANGELES

Date: **SEP 18 2008**

IN RE: Applicant: [Redacted]

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 "Robert 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 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.

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:

AFFIDAVITS/WITNESS STATEMENTS

- The affiant submitted 12 sworn affidavits/witness statements in support of his Form I-687. All of the affidavits are similar in nature and provide only generalized information stating that the affiant has known the applicant for a particular amount of time. The majority of affiants state that they have known the applicant since 1980, or earlier. One affiant states that he has known the applicant since 1988, and another since approximately 1984. The affidavits do not state that the applicant was first known by the affiants in the United States, or that the applicant has resided in the United States throughout the requisite period.

As stated earlier in this decision, 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 evidence submitted by the applicant in support of his application includes the above referenced affidavits/witness statements. The affidavits indicate generally that the affiants have known the applicant for various time periods. None of the statements provide detailed information of the affiant’s relationship with the applicant or establish that the applicant has resided continuously and unlawfully in the United States for the requisite

period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements do not provide detailed information establishing the extent of the affiant's association or relationship with the applicant, or detailed accounts of the affiant's ongoing association establishing a relationship under which the writers could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative, witness statements and related proof 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. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. 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. 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 the witness statements presented fail to establish continuous residence in an unlawful status in the United States for the requisite period.

EMPLOYMENT

- [REDACTED] issued an unsworn statement wherein he states that "to the best of [his] recollection," the applicant "was an employee at El Indio Mexicano Restaurant in the City of Northridge[,] and in my Theatre Campus, in Hollywood between the years of 1977 through the year 1982." Mr. [REDACTED] provides no additional information.

[REDACTED] issued an unsworn statement wherein he states that "to the best of [his] recollection," the applicant was employed by [REDACTED] Industries (a landscape construction company) from 1983 through 1988. Mr. [REDACTED] states that the company is no longer in business and there are no company records.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statements submitted by the applicant are of little probative value as they fail to provide all information required by the above-cited regulation. The statements do not provide the applicant's address during employment, show periods of layoff (or state that there were none), or declare whether the information attested to was taken from employment records. One employer states that no company records exist, and the other does not identify the location of any such records, or state whether the records are accessible, and if not, why not. Neither employer states with certainty that the applicant was employed for any particular period of time, with each stating only that the applicant was employed to the best of their recollection.

The applicant submitted no additional evidence in support of his Form I-687 petition.

Beyond the decision of the director, the record indicates that the applicant has one misdemeanor conviction for reckless driving. The record further indicates that on or about April 27, 1997 the applicant was charged with one count of "DUI Alcohol/08/100 or above," and one count of "Exhibit Deadly Weap. No F/A." The record does not contain court documents showing a final disposition of those charges. The record does contain a letter dated June 24, 2005 from the Superior Court of California, County of Los Angeles, and signed by the Deputy Clerk, which states "No Record Found For Arrest Date 1997." This court letter is not sufficient to establish a final disposition of the charges noted. Documentation must be submitted to establish that the court has finally disposed of the charges, or that the applicant was not charged with the above noted offenses. An applicant convicted of three misdemeanor offenses is ineligible for adjustment to temporary resident status. For this additional reason, the application may not be approved.

Therefore, based upon the foregoing, 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.