



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-081-11956

Office: LOS ANGELES

Date: JUN 28 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated eligibility for temporary resident status due to inconsistent testimony and information provided by the applicant. As a result, the director denied the Form I-687 Application for Status as a Temporary Resident. The notice of decision also included information regarding whether the applicant had been discouraged from filing an application for temporary residence during the eligibility period. This statement appears to be a typographical error and is withdrawn by the AAO.

On appeal, the applicant attempted to explain apparent inconsistencies in his testimony and provided additional documentation.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 and 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.* 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 Application for Status as a Temporary Resident and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on December 20, 2005. At part #20 of the Form I-687 application where applicants were asked to list their father's name and year of death, if deceased, the applicant stated his father's name as [REDACTED] indicated his father is currently deceased, and indicated that his father's date of death was January 11, 1985. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be at [REDACTED] Los Angeles, California from October 1981 to January 1991. At part #32 where applicants were asked to list absences from the United States, the only visit the applicant listed during the statutory period was a visit to Mexico from December 15, 1987 to January 15, 1988 to visit family. At part #33 where applicants were asked to list employment, the only employment the applicant listed during the statutory period was with [REDACTED] in Los Angeles, California from December 1981 to October 1994.

The applicant also submitted one affidavit to confirm his residence in the United States during the statutory period. [REDACTED] provided an affidavit stating that the applicant lived in [REDACTED] household from August 25, 1981 to February 15, 1991 at [REDACTED], Los Angeles, California. This statement is found to be inconsistent with the information listed on Form I-687, which indicates the applicant moved into the [REDACTED] residence in October 1981 and departed this residence in January 1991. Although not required, the affiant did not provide documentation of his presence in the United States during the statutory period. The applicant

submitted additional affidavits that do not pertain to the applicant's residence in the United States during the statutory period.

At his interview with a CIS officer on April 18, 2006, the applicant indicated he was employed with [REDACTED] from 1981 to 1988. This information is found to be inconsistent with the applicant's statement on Form I-687 indicating he worked for [REDACTED] from 1981 to 1994. The applicant stated in the CIS interview that he was paid for this position in cash. This may explain the applicant's failure to provide pay stub documentation of his employment. However, it is noted that the applicant also failed to provide affidavits from former co-workers or any other form of documentation of his employment during the statutory period.

In the CIS interview, the applicant also stated that his first entry into the United States was in December 1981. He stated he remembers the date he entered because of the December holiday. This statement is found to be inconsistent with Form I-687, where the applicant listed his first period of residence in the United States as beginning in October 1981. In addition, the applicant stated in the CIS interview that he left the United States three times. The first time was from December 1987 to January 1988, when his father had surgery. This statement is inconsistent with the applicant's statements on Form I-687 regarding his father. Specifically, on Form I-687 the applicant stated that his father died on January 11, 1985. This inconsistency calls into question whether the applicant actually resided in the United States for the duration of the statutory period.

In denying the application the director noted the inconsistencies between the applicant's statements in the interview with the CIS officer and his statements on Form I-687. The director also explained that the affidavits submitted by the applicant failed to state the basis of the affiant's knowledge and did not establish contemporaneous or first-hand knowledge. As a result, the director accorded no evidentiary weight to the affidavits. Based on the inconsistent statements and lack of additional evidence, the director denied the Form I-687 application.

On appeal the applicant attempted to explain the inconsistencies in his prior statements. The applicant indicated he was nervous during the CIS interview and that he sometimes did not understand the officer's questions. It is noted that the record contains a form signed by the applicant authorizing an interpreter to interpret on the applicant's behalf during the CIS interview. As a result, the applicant's explanation of his inconsistent responses based on his inability to understand the officer's questions is found not to be reasonable under the circumstances. On appeal, the applicant stated that in the interview he had meant that he entered the United States "before December 1981," as opposed to "in December of 1981." The applicant also stated that at the time of the interview he could not remember that when he returned to Mexico in December 1987 it was to visit his family for his mother's surgery, as opposed to his father's surgery. In addition, he indicated that his confusion regarding dates was a result of having been in the United States for a long time. These explanations are found not to be reasonable under the circumstances.

The applicant attached an affidavit from [REDACTED] confirming a friendship with the applicant since 1984. In this affidavit, [REDACTED] stated that the applicant was the affiant's neighbor for more than 20 years at [REDACTED], Van Nuys, California. The affiant attached a copy of his identity document, which lists the [REDACTED] address as the affiant's address. The

affiant's statement is found to be inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant indicated he did not move to Van Nuys, California until 1991. Therefore, the applicant could not possibly have been a neighbor of the affiant at the [REDACTED] address for more than 20 years. This inconsistency calls into question whether the applicant actually resided in the United States during the statutory period. Although not required, the affiant provided no evidence of his presence in the United States during the statutory period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and the applicant's testimony in his interview with a CIS officer is found to conflict with his statements on Form I-687. Specifically, the applicant indicated on his Form I-687 that he first resided in the United States starting in October 1981. However, he stated in his CIS interview that he entered the United States for the first time in December 1981. The applicant stated on Form I-687 that his father died in 1985, yet the applicant testified in his CIS interview that he left the United States in December 1987 because his father had surgery. In addition, the applicant submitted affidavits that conflict with his statements. Specifically, the affidavit from [REDACTED] conflicts with the applicant's statements on Form I-687 regarding his dates of residence at the [REDACTED] address in Los Angeles, California. In his affidavit [REDACTED] professes to have been a neighbor of the applicant at an address in Van Nuys, California for more than 20 years, although the applicant stated on Form I-687 that he did not reside in Van Nuys until January 1991. The applicant also failed to provide any supporting documentation regarding his employment in the United States, despite having indicated that he was employed continuously from 1981 until 1994 at [REDACTED].

The absence of sufficiently detailed and consistent 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 contradictory statements provided in the applicant's I-687 application, CIS interview, and supporting affidavits, and 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.