



U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO Date: NOV 19 2007
MSC 05 245 11006

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:



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

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel asserts that the applicant has provided sufficient evidence in the form of affidavits to corroborate his claim of continuous residence in the United States throughout the requisite period. Counsel submits a copy of a document previously submitted in support of the applicant's claim.

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 applying 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 alien 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 alien applying 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, its credibility and amenability to verification. *See* 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 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 2, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Chicago, Illinois” for an unspecified period and at [REDACTED], Chicago, Illinois” from October 1991 to October 1994. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant did not list any employment in this country prior to March 1990.

At his interview with a CIS officer, the applicant dated that he first entered the United States from Mexico without inspection on March 29, 1981. He claimed that he “boarded a truck to Chicago” and stayed with friends in Chicago while working as a mechanic.

It is noted that the record contains a previous Form I-687 signed by the applicant on February 28, 1990. The applicant indicated on the 1990 Form I-687 that he resided at [REDACTED]

Chicago, Illinois" from April 1981 to May 1983, at [REDACTED] Chicago, Illinois" from May 1985 to June 1988, and at [REDACTED], Chicago, Illinois" from June 1988 to the date he signed the Form I-687. The applicant did not list either Ansie address on the current Form I-687, and he failed to indicate the dates of residence at the [REDACTED] address on the current Form I-687.

The applicant indicated on the 1990 Form I-687 that he was working as a self-employed babysitter from March 1981 to August 1984, as a self-employed car detailer for an Amoco gas station at an unspecified location from August 1984 to June 1988, and as a baker for a Dunkin Donuts restaurant in Melrose Park, Illinois, from June 1988 to the date he signed the application. The applicant did not list his purported work as a self-employed babysitter from 1981 to 1984 or his work as a car detailer from 1984 to 1988 on the current Form I-687. Furthermore, the applicant did not provide any independent evidence to corroborate these employment claims. Nor has he provided any explanation for his failure to list this employment on his current Form I-687.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated February 28, 1990, from [REDACTED], a resident of Chicago Illinois. [REDACTED] stated that the applicant resided at "[REDACTED] Chicago, Illinois" for two years as a paying guest for a monthly rent of \$125. However, Mr. Patel failed to provide the inclusive dates when the applicant resided at that address.

The applicant submitted an affidavit dated May 23, 2002 from [REDACTED] a resident of Chicago, Illinois. [REDACTED] stated that he had known the applicant since December 1981 when the applicant began working at his business, Super Auto Repair, located at "[REDACTED] Chicago, Illinois." [REDACTED] stated that the applicant worked for him as a part-time helper from December 1981 to June 1988 and was paid as an "independent contractor." Mr. [REDACTED] explained that the applicant took leaves of absence to return to India from February to March 1986 and from February to March 1988.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The employment affidavit from [REDACTED] does not conform to this standard. [REDACTED] does not provide the applicant's addresses during the employment period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant provided a letter dated September 14, 2003, from [REDACTED] Mandir Coordinator, Shree Swaminarayan Mandir, located at [REDACTED], Bartlett, Illinois." [REDACTED] stated that the applicant was a member of his Hindu temple and attended services regularly from 1981 to 1988.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches, unions, or other organizations to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The letter from Mr. [REDACTED] does not conform to this standard. He failed to state the addresses where the applicant resided during the membership period, and the origin of the information being attested to. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant provided an affidavit from [REDACTED], a resident of Aurora, Illinois. Mr. [REDACTED] stated that he had known the applicant since June 1981. [REDACTED] explained that he and the applicant were family friends and saw each other on social and religious occasions. However, [REDACTED] failed to provide any information as to the frequency of his contact with the applicant or the applicant's addresses in the United States during the requisite period.

The applicant submitted an affidavit dated February 18, 2004, from [REDACTED], a resident of Bensenville, Illinois. [REDACTED] stated that he had personal knowledge that the applicant had been a continuous resident of the United States since 1981. [REDACTED] explained that the applicant arrived in Bombay on February 27, 1986, for his arranged marriage scheduled to take place on March 5, 1986, and left India to return to the United States on March 27, 1986. [REDACTED] further stated that the applicant returned to Bombay on February 20, 1988, and left India to return to the United States on March 19, 1988. [REDACTED] provided testimony regarding the applicant's absences in India, but he did not provide any information as to the basis of his knowledge that the applicant had resided continuously in the United States since 1981, the frequency of his contact, or the applicant's addresses in the United States during the requisite period.

It is noted that the applicant filed a Form I-485 application for permanent resident status under the under the Legal Immigration Family Equity (LIFE) Act with CIS on May 30, 2002. In conjunction with this application the applicant submitted a Form G-325A, Biographic Information. The applicant indicated on this form that he resided in Ahmedabad, India, from July 1957 to November 1981. This statement contradicts his statement during his interview that he first entered the United States on March 29, 1981. The applicant has not provided any explanation for this discrepancy in his claimed dates of initial entry into the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant also submitted his April 2, 2003 and March 23, 2005, Social Security statements. These statements do not reflect any taxed Social Security or Medicare earnings prior to 1990.

The district director denied the application on September 27, 2005, because the applicant failed to submit sufficient evidence to establish continuous residence in the United States during the requisite period. The district director specifically noted that CIS had tried to contact [REDACTED] owner of Super Auto Repair, several times to verify the applicant's employment claim for that business, but was unable to speak with [REDACTED]. The district director further noted that [REDACTED] Mandir Coordinator of Shree Swaminarayan Mandir Temple, stated when contacted on the telephone that he had known the applicant to be a member of the Hindu Temple in La Grange Park, Illinois "for the past five years."

On appeal, counsel reiterates the applicant's claim of continuous residence in the United States throughout the requisite period. Counsel asserts that CIS should have written to [REDACTED] or made more attempts to call him on the telephone to verify the applicant's claim of employment for Super Auto Repair during the requisite period. Counsel provides [REDACTED]'s cell phone number.

Counsel further states that [REDACTED] has been working at the La Grange, Illinois Temple as a coordinator for the past five years, but the Temple was previously located in Lombard, Illinois, and the applicant had been a member of the Temple at its previous location.

Finally, counsel asserts that the applicant lost his "bag containing all documents pertaining to his CSS class membership claim while on board a Chicago Transit Authority bus." Counsel provides a copy of Lost and Found Report from the Chicago Police Department, Chicago, Illinois, stating that the applicant lost a backpack containing miscellaneous clothing, a black wallet containing \$30, his Indian passport, and "other miscellaneous papers." There is no way to determine the contents of the applicant's lost backpack. Nevertheless, the applicant previously filed a Form I-687 application in 1990 to establish his membership in the CSS/Newman class action lawsuit. He did not submit any copies of contemporaneous documents in support of the application at that time. In fact, the only document he submitted at that time relating to the requisite period was the affidavit from [REDACTED].

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only five people concerning that period, all of which lack sufficient specific and verifiable detail to corroborate the applicant's claim.

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 applicant's contradictory statements on his applications and 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 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.