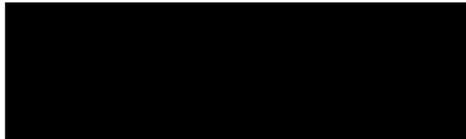


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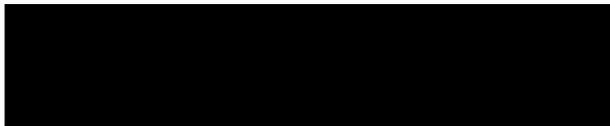
Office: LOS ANGELES

Date:

MSC-05-211-11182

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:



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

The 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. Specifically, the director noted that the applicant submitted an affidavit which stated that he had lived in Long Beach, California from February of 1981 until December of 1988 but claimed at the time of his interview with a CIS officer on January 13, 2006 that he entered the United States in December of 1981 and lived in Ohio from that time until he moved to California in February of 1982. The director noted that the applicant was asked about his residences in the United States during the requisite period more than once during his interview and that he consistently provided the same responses each time. The director referred to a sworn statement written and signed by the applicant under oath before an Immigration Officer at the time of his interview which also indicated that he first entered the United States in December of 1981, lived in Ohio and then moved to California in February of 1982. Because the applicant only submitted one (1) affidavit in support of his claim of having maintained continuous residence for the duration of the requisite period and because information in this affidavit conflicted with what the applicant consistently indicated during his interview, the director found that this cast doubt on the applicant's claim of having maintained continuous residence for the duration of the requisite period. Therefore, the director determined that the applicant had not met his burden of establishing, by a preponderance of the evidence, that he was eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that when he was interviewed by a CIS Officer he became confused because he was bombarded with questions from two interviewers. He goes on to say that this state of confusion caused him to erroneously state that he moved to California on in February of 1982 and to inadvertently sign a document during his interview that attested to this same statement. He reasserts that he continuously resided in the United States for the duration of the requisite period and submits a declaration, a brief and a new affidavit as evidence in support of this 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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 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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 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. 8 C.F.R. § 245a.2(d)(5).

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 April 29, 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 showed his address in the United States for the duration of the requisite period to be Frederick Town Road, Mt. Vernon, Ohio where he showed he lived from February 1981 until December 1988. At part #33, he showed his employment in the United States for the duration of the requisite period to be for Better Living Haven located at [REDACTED] where he was a home care provider from March 1981 until December of 1988. It is noted here that on this same application the applicant has shown that he lived in Ohio while working in California for the duration of the requisite period.

The record shows that during his interview with a CIS officer on January 13, 2006, the applicant stated that he came to the United States in December of 1981 and lived in Ohio for two (2) to three (3) months. The record shows he then stated that he moved to California in February 1982 after he left Ohio. The record further contains a sworn statement signed by the applicant that reiterates these statements. The officer's notes from the interview indicate the applicant said another individual completed his application. However, it is noted here that at part #44 of his Form I-687 application, no one's name and signature appear as the preparer of the application.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documents that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided one (1) affidavit which he submitted with his Form I-687.

This affidavit is from [REDACTED] who states that the applicant resided at her house in Long Beach, California from February of 1981 until December of 1988. This affidavit was signed and notarized on December 30, 2005. Here, although not required, the affiant failed to provide documentation of her identity or her residence in the United States during the statutory period. Further, the applicant indicated that he lived in Ohio for the duration of the requisite period on his Form I-687 and then during his interview, he indicated that he first entered the United States in December of 1981 in Ohio and began living in California in February of 1982. This affidavit is found to conflict with other evidence in the record and therefore, doubt is cast on the assertions made by the affiant regarding the applicant's residence during the requisite period.

Affidavits that have been properly attested to under perjury of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, *supra*. Here, the affidavit submitted by the applicant is inconsistent with other evidence in the record. Therefore, minimal very weight can be accorded to this affidavit.

As is stated above, the regulation at 8 C.F.R. § 245a.2(d)(3) provides a comprehensive list of documents an applicant can submit as evidence that he or she resided continuously in the United States for the duration of the requisite period. Here, however, the applicant submitted only one affidavit and this affidavit is not consistent with other evidence in the record.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In denying the application the director noted the above, and stated that the inconsistencies in the record cast doubt on the applicant's claim of having maintained continuous residence for the duration of the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the applicant attempts to explain these contradictions. He furnishes a brief, a declaration, a new affidavit and resubmits his previously submitted affidavit with identification documents from the affiant. Details of evidence submitted in support of the applicant's appeal follow.

In his brief, the applicant states that he first entered the United States in February of 1981 and moved both to Ohio and then to California during that month. He asserts that he became confused during the course of the interview, which caused him to claim that he came to California in February of 1982 and to sign a sworn statement attesting to this. He goes on to say that the declaration submitted with his appeal was written under circumstances where he was able to think clearly rather than the circumstances during his interview, which he states were intimidating. It is noted here that the brief does not indicate why the applicant showed his address for the duration of the requisite period to be in Ohio on his Form I-687 which was, presumably, completed under similar circumstances to that which he described he was under at the time he completed this declaration.

Previously submitted Affidavit from [REDACTED]

This affidavit was previously submitted by the applicant with his Form I-687. It states that the applicant resided at the affiant's house in Long Beach, California from February of 1981 until December of 1988. A photocopy of the affiant's driver's license was further submitted with this affidavit. In this resubmission, the affiant failed to provide documentation establishing her residence in the United States during the statutory period. This affidavit continues to conflict with statements made during the applicant's interview, with his sworn statement submitted during his interview and with his Form I-687 regarding his address of residence during the requisite period. Therefore, doubt is cast on the assertions made by the affiant regarding that address. Because of this, minimal very weight can be accorded to this affidavit.

The applicant's declaration:

In his declaration, the applicant states that he first entered the United States in February of 1981 and moved to Ohio at that time. It goes on to say that the applicant moved to California that same month but that during his interview, he became confused and that this confusion caused him to make statements and sign a sworn statement stating that he came to California in February of 1982. The applicant states that he is employed as a caregiver. It is noted that the applicant has not submitted any evidence regarding his employment during the requisite period. The applicant re-asserts that he has maintained continuous residence in the United States for the duration of the requisite period and refers to declarations submitted in support of this claim.

A declaration from [REDACTED]

In this declaration, [REDACTED] states that she met the applicant in 1981 when he was doing odd jobs for her such as cleaning her house and gardening. She asserts that the applicant lives in Long Beach and was working as a care-giving during the week. Here, although not required, the affiant failed to provide documentation of her identity or her residence in the United States during the statutory period. She failed to establish how often the applicant worked for her or whether there were gaps in his employment which could indicate an absence or gap in residence. It is noted that while [REDACTED] indicates that the applicant works in an on-call basis doing odd jobs and has done so from 2002 to 2006, the applicant has indicated on his Form I-687 that he works for the "[REDACTED]" in a full time capacity as a home care provider and has earned \$21,000 per year doing so since July of 2004. Because this declaration is significantly lacking in detail, minimal weight can be accorded to it as evidence that the applicant continuously resided in the United States during the requisite period.

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 two (2) people concerning that period. Though he asserts on appeal that he entered California in February of 1981 but was confused at the time of his interview, which caused him to indicate that he entered the United States in December of 1981 and California in February of 1982, he has not indicated what caused him to show that he lived in Mt. Vernon, Ohio for the duration of the requisite period on his Form I-687. It is also noted that though the applicant claims both to have been employed full time as a care giver during the requisite period and to be employed in that capacity currently on his Form I-687 and in the declaration he submitted with his

appeal, he has not submitted any evidence of such employment in the United States during or after the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). In addition to documents containing his statements, the applicant submitted one (1) affidavit and one (1) declaration in support of his claim of having maintained continuous residence in the United States during the requisite period to satisfy his burden of proof. However, for the reasons mentioned previously, it is determined that the applicant has not satisfied this burden.

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 that statements on his application, during his testimony at the time of his interview and in affidavits he submitted 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.