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U.S. Citizenship
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Services

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FILE:



Office: NEWARK

Date: JUL 22 2008

MSC-06-047-11972

IN RE:

Applicant:



APPLICATION:

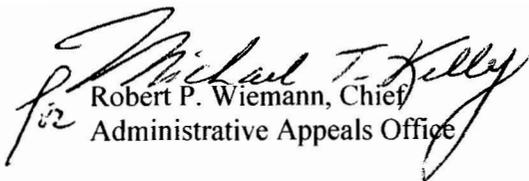
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

for 
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, Newark. 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, on November 16, 2005 (together, the I-687 Application). 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 as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a statement, and indicated that he would submit a brief within 30 calendar days. On appeal, the applicant stated that he arrived in Orlando, Florida from the Philippines on October 1981, moved to New Jersey and then began working in New Jersey in as an undocumented worker. In his written statement, the applicant also states that he left for the Philippines in 1987, when his mother died, and re-entered the United States "via Toronto on April 1987. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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)(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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 entered before 1982 and resided in the United States for the requisite period.

The applicant has provided several notarized affidavits; a copy of the applicant's birth certificate; a copy of the applicant's passport issued on March 13, 2000; a copy of the applicant's Form I-94 card with an entry date of May 2001; a copy of the applicant's visitor's visa issued on July 31,

2000 in Manila; a copy of the applicant's Social Security Administration statement dated August 19, 2005 indicating that [REDACTED] paid social security taxes from 2001 to 2004; and copies of the applicant's Internal Revenue Service (IRS) Forms W-2 and 1040 for 2001 to 2004. The applicant's birth certificate and passport are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite time period. The record of proceedings contains the following statements from witnesses in support of the application:

- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated November 3, 2005. The declarant states that he lives in Bergenfield, New Jersey and has personal knowledge that the applicant has resided in the United States from December 1981 to the present. The declarant provides a list of addresses and dates for the applicant which is consistent with the applicant's Form I-687. The declarant also states that the applicant has been his neighbor since he lived in the Philippines and that he met him in the United States when he arrived with his two brothers and brother-in-law. The declarant states that the "longest period during the residence described in which he has not seen the applicant is one week." Although the declarant states that he has known the applicant since 1981 and provides some information consistent with the Form I-687, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant, to corroborate the extent of the declarant's contact with the beneficiary during the period the statement addresses, and to establish the reliability of the declarant's assertions. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated November 2, 2005. The declarant states that she lives in Bergenfield, New Jersey and has personal knowledge that the applicant has resided in the United States from December 1981 to the present. The declarant provides a list of addresses and dates for the applicant which is consistent with the applicant's Form I-687. The declarant also states that the applicant has been her neighbor since she lived in the Philippines and that she met him in the United States when he arrived with his two brothers and brother-in-law. The declarant states that the "longest period during the residence described in which she has not seen the applicant is one week." Although the declarant states that she has known the applicant since 1981 and provides some information consistent with the Form I-687, this statement carries little evidentiary weight. As with all of the witness statements in this record of proceedings, it does not supply enough details to lend credibility to asserted relationship with the applicant, to corroborate the extent of the declarant's contact with the beneficiary during the period the statement addresses, and to establish the reliability of the declarant's assertions. Accordingly, the statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit “For Proof of Residency” from [REDACTED] dated November 4, 2005. The declarant states that he lives in Bergenfield, New Jersey and states that the applicant lived at [REDACTED] Bergenfield, New Jersey from August 2000 to May 2001. The declarant states that the applicant is his brother and that the applicant resided with him at his previous residence from November 1988 to May 2001. The AAO notes that the declarant does not provide information about the applicant’s first entry into the United States or confirm whether he entered the United States with the applicant in 1981. As this affidavit does not address whether the applicant resided in the United States during the relevant time period, it has no probative value in supporting the I-687 application.
- A notarized form-letter affidavit “For Proof of Residency” from [REDACTED] dated November 4, 2005. The declarant states that he lives in Bergenfield, New Jersey and states that the applicant lived at [REDACTED] Bergenfield, New Jersey from May 1987 to June 2000. The declarant states that the applicant is his friend and that the applicant resided with him at [REDACTED], Bergenfield, New Jersey. Although the declarant provides an address for the applicant that is consistent with the Form I-687, the declarant does not provide information about the applicant’s first entry into the United States or confirm whether he resided in the United States during the entire relevant time period. Further, the declarant does not provide specific and verifiable details relevant to his claimed association with the applicant. The statement does not contain sufficient details to lend credibility to the asserted relationship with the applicant, to corroborate the extent of the declarant’s contact with the beneficiary during the period the statement addresses, and to establish the reliability of the declarant’s assertions. Therefore, this statement has limited probative value.
- A notarized form-letter affidavit “For Proof of Residency” from [REDACTED] dated November 4, 2005. The declarant states that she lives in New Milford, New Jersey and states that the applicant lived at [REDACTED], River Edge, New Jersey from December 1981 to March 1987. The declarant states that the applicant is her friend and that the applicant “rented a room in [her] residence.” Although the declarant provides an address for the applicant that is consistent with the Form I-687, the declarant does not provide information about the applicant’s first entry into the United States or confirm whether he resided in the United States during the entire relevant time period. As this statement exhibits the same informational deficiencies discussed above, it too has little probative value.
- A handwritten letter from St. John the Evangelist Rectory dated October 28, 2006 and signed by Reverend [REDACTED] [illegible last name]. The letter is written on the church’s note paper. The letter states that the applicant “is a member of [the] parish and a resident of Bergenfield, living at [REDACTED].” The letter is not notarized. While consistent with the applicant’s statement on appeal, the applicant failed to list any

such association on his Form I-687. Moreover the letter fails to conform to regulatory guidelines in that it does not state the address where the applicant resided during the membership period; establish how the author knows the applicant; or state the origin of the information provided. *See* 8 C.F.R. § 245a.2(d)(3)(v). Furthermore, the letter does not provide information about the applicant's first entry into the United States or confirm whether he resided in the United States during the entire relevant time period. Given these deficiencies, this statement has no probative value in supporting a claim that the applicant entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in October 1981. The applicant claims that in October 1981 he traveled from the Philippines to Orlando, Florida with a tour group organized by a travel agency that included his two older brothers, his brother-in-law, and a nephew. The applicant states that he and his family members left the tour group in Florida and drove to New Jersey with the help of a friend. The applicant states that he has lived in New Jersey since that time. The applicant also states that he traveled to the Philippines in March 1987 after his mother died and returned to the United States through Canada. Although the applicant claims to have first entered the United States by arriving in Orlando, Florida from the Philippines, the applicant has not submitted any evidence of his initial entry into the United States such as a passport, a Form I-94, or ticket stubs. The applicant claims to have lost his passport "sometime in June 1988" by giving it to a paralegal whom he hired to file his Form I-687 application and who subsequently disappeared after being paid. The applicant states that he has "exerted all efforts possible to locate this person but to no avail." The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director denied the application for temporary residence on November 6, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 and that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant restated that he arrived in Orlando, Florida from the Philippines on October 1981, moved to New Jersey and then began working in New Jersey in as an undocumented worker. In his written statement, the applicant also restated that he left for the Philippines in 1987, when his mother died, and re-entered the United States "via Toronto on April 1987. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative evidence to corroborate the applicant's claim of continuous residence for the 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 lack of credible supporting documentation, it is concluded that 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.