U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHERRY HILL Date: MAY 05 2008

MSC 05 018 11009

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:

[redacted]

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 Records 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.

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, New Jersey, and 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 of May 5, 1987, to May 4, 1988. Therefore, the 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, the applicant asserts that he filed for adjustment of status pursuant to *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS), *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) (Zambrano). The applicant alleges that his application had been returned to him with the explanation that he did not qualify because he had filed for benefits as a Special Agricultural Worker. The applicant states that he returned to the district office and his application was accepted but he did not receive any further correspondence from the office.

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on March 22, 2002, as an applicant for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000), under CIS receipt number MSC 02 173 63583. The application was denied by the Missouri Service Center on April 29, 2003, because the applicant failed to establish that he had applied for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000. The record does not reflect that the applicant appealed the denial of his Form I-485 application. However, we note that the current appeal references the receipt number for the Form I-485 application while indicating that the applicant was appealing the denial of his Form I-687 application. As the appeal was filed within the required time frame for the denial of the Form I-687 application, we will consider that the applicant timely appealed the denial of his application pursuant to the CSS/Newman Settlement Agreements.

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 or 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 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 with CIS on October 18, 2004. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant indicated that he lived at [redacted] in Dallas, Texas from December 1981 to April 1985; at [redacted] in Arvin, California from May 1985 to December 1985; and at [redacted] in Los Angeles from January 1986 to January 1989. At part #33 where applicants are asked to list all employment in the United States since entry, the applicant did not list any employment prior to 1993.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, mostly in the form of copies of tax returns. However, none of the returns relate to the required period of 1981-1988. Other documentation submitted by the applicant includes the following:

1. A copy of a November 15, 1988, sworn statement from in which he stated that he was the foreman for Hillside Farms in Maricopa, California, and that the applicant worked there from May to December 1985.

2. A copy of a May 23, 1988, letter from The Outdoor Recreation Group, verifying that the applicant had worked for the company since March 31, 1988. The letter did not indicate the applicant's residence at the time he worked for the company as required by 8 C.F.R. § 245a.2(d)(3).

In a Notice of Intent to Deny dated May 18, 2005, and again in the Notice of Decision, the director questioned the applicant's claim that he was eligible for relief under the CSS/Newman Settlement Agreements and citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), further stated that the applicant's assertions cast doubt on all of the other evidence offered in support of the visa application.

The applicant reasserted his claim that he filed for benefits under the CSS/LULAC Settlement Agreements. However, he submitted no additional documentation to address the issue of his continuous residence and presence during the qualifying period.

The evidence submitted by the applicant does not establish that he resided in the United States prior to January 1, 1982, and lived here continuously throughout the requisite period. The letter from Hillside Farms states only that the applicant worked for the company for a period of approximately 90 days in 1985. The letter from Outdoor Recreation Group indicates that the applicant began working for the company in March 1988. Neither of the documents indicates whether the information concerning the applicant's employment was taken from company records, as required by 8 C.F.R. § 245a.2(d)(3).

Accordingly, it is concluded that the applicant 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. 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.