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U.S. Citizenship
and Immigration
Services



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FILE: 
MSC-06-088-17760

Office: LOS ANGELES

Date: **JAN 13 2009**

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.

John F. Grissom, Acting 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 Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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. 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 noted that the affidavits submitted state only that the affiants have known the applicant to be in the United States prior to 1982. The director further noted that the applicant's Social Security Statement of Income shows earnings starting in 1988. The director denied the application, finding that 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 asserts that he was unable to provide documents from the Internal Revenue Service in response to the Request for Evidence (RFE) because they were only received by him after his Form I-687 application had been denied. The applicant submits a copy of his IRS Account Transcript Income Information.

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).

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) 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. See 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 period, 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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on December 27, 2005.

The applicant submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since childhood and that the applicant resided at [REDACTED] in Commerce, California in 1981. They also stated that they would visit with the applicant in Commerce, California.

The affiants fail to specify the applicant's place of residence subsequent to 1981, and during the requisite period. They also fail to provide any detail relating to their first-hand knowledge of the applicant's whereabouts and the circumstances of his residence. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. Because the affidavits are lacking in detail, they can be accorded little weight in establishing that the applicant resided in the United States for the duration of the requisite period.

The applicant submitted a copy of his Social Security Statement of Income which listed the applicant's yearly income starting in 1988. Although this evidence demonstrates the applicant's presence in the United States since 1988, it is insufficient to demonstrate his continuous residence in the United States throughout the requisite period.

In denying the application the director noted that the evidence submitted was insufficient to establish the applicant's eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and submits a copy of his IRS Account Transcript Income Information that lists the applicant's income for the 1983, 1984, 1985, 1986, and 1988 tax years. The applicant also submitted a copy of his IRS Form W-2, Wage and Tax Statement for the 1982 tax year which showed his earnings for that year to have been \$576.98.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. The attestations are lacking in detail, and therefore, insufficient to establish the applicant's continuous unlawful status in the United States since before January 1, 1982. The Social Security Statement of Income is evidence of the applicant's presence in the United States since 1988 but not prior to that time. The IRS Account Transcripts establish that the applicant had some income in the United States in 1983, 1984, 1985, 1986 and 1988. The applicant's IRS Account Transcript Income Information fails to support the applicant's contention of residency in the United States in 1982 and 1987.¹ Although the applicant claims that he was present in the United States in 1982, and he submitted a copy of his IRS Form W-2 for the 1982 tax year, it is insufficient to demonstrate his continuous residence in the country during that year.²

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

¹ It is noted that the record of proceeding does not contain copies of the applicant's tax returns for the 1982 and 1987 tax years. There is no account transcript for 1982 and the IRS transcript for 1987 reflects no adjusted gross income.

² It is noted that according to the IRS Form W-2, the applicant's salary for 1982 was only \$567.98, and there is no indication from the record of proceeding to demonstrate when during that year that income was earned.

verification. Given the applicant's reliance upon evidence that is lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.