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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 06 018 12710

Office: DALLAS

Date:

JAN 26 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, Dallas. 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. 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, 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. Specifically, the director noted that the evidence submitted by the applicant failed to establish his continuous residence in the United States from 1982 – 1988. The director noted that the evidence submitted did not adequately address a lack of employment history from 1984 – 1986, and that affidavits submitted were either not verifiable, or it could not be determined that the witnesses were present in the United States during the requisite period.

On appeal, the applicant submits additional evidence and states that he was employed from 1984 – 1986, but that when he contacted his former employers for that time period, they were unable to provide verification because employment records are not maintained for such a distant time period.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The relevant documentation that the applicant submits in support of his claim to have arrived in the United States before January of 1982, and lived in an unlawful status during the requisite period, consists of the following: three personal witness statements; copies of business cards from [REDACTED] and [REDACTED]; the applicant's statement in response to the director's NOID; an employment statement from [REDACTED] and associated payroll receipts; a copy of a payroll receipt from the Continental [REDACTED]; a church attestation from the [REDACTED] of the Our Lady of Lourdes Church; a motor vehicle tax receipt in the applicant's name from 1980; and a motor vehicle sales receipt in the applicant's name from 1979.

First, it is noted that the applicant has submitted probative, relevant and verifiable evidence establishing that he did, in fact, enter the United States before January 1, 1982. The evidence of record does not, however, establish that the applicant has continuously resided in the United States for the duration of the requisite period. The applicant submitted joint witness statements from [REDACTED]

██████████ and ██████████, and from ██████████ and ██████████, who state that they have known the applicant since 1980 and 1979 respectively. The statements provide no additional information about the applicant's activities or whereabouts during the requisite period. In an effort to verify the information contained in the statement of ██████████ and ██████████ CIS personnel contacted ██████████. Ms. ██████████ stated that she did not know the applicant. The applicant submitted a witness statement from his sister ██████████ who states that the applicant resided with her at ██████████ Dallas, TX from 1978 – 1990. The statement provides no additional information about the applicant's activities or whereabouts during the requisite period. It should be further noted that ██████████'s statement is contradicted by the applicant's statement submitted in response to the director's NOID wherein he states that he came to live with his sister at the previously mentioned address in 1987, not 1978 as stated by ██████████. This inconsistency is material to the applicant's claim as it has a direct bearing upon the applicant's residence during the requisite period, and the inconsistency is not explained in the record. Doubt cast on any aspect of the petitioner's proof may 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, 591-92 (BIA 1988).

As noted above, the witness statements provided by the applicant state generally that the witnesses know the applicant and that he has resided in the United States for the requisite period, or some portion thereof. The statements provide no additional detail about the witnesses association with the applicant or his activities and whereabouts during the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided did not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witnesses do, by virtue of that relationship, have knowledge of facts asserted.

The applicant also presented an attestation from the ██████████ of Our Lady of Lourdes Church who stated that the applicant is a member of his parish and "has been registered since 1986." ██████████ a further stated that the applicant was known to attend church there before that date in the company of his family. This attestation is insufficient to establish the applicant's residence in the United States for the duration of the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
- (A) Identifies applicant by name;
 - (B) Is signed by an official (whose title is shown);
 - (C) Shows inclusive dates of membership;
 - (D) States the address where applicant resided during membership period;
 - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
 - (F) Establishes how the author knows the applicant; and
 - (G) Establishes the origin of the information being attested to.

The attestation/unsworn statement made on the letterhead of Our Lady Of Lourdes Church does not state the address where the applicant resided during the membership period, does not establish how the statement maker knows the applicant, and does not establish the origin of the information being attested to. The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

Finally, the applicant's statement alone is not sufficient to sustain the burden of proof in these proceedings. **8 C.F.R. § 245a.2(d)(6)**. 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States for the duration of the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.