



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

4

FILE:

MSC-05-224-10527

Office: CHICAGO

Date:

JUN 22 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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Chicago. 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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was not sufficient to support the applicant's claim that he had resided in the United States continuously throughout the requisite period.

On appeal, the applicant contends that he has submitted sufficient credible evidence to establish continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

The record shows that on August 6, 2007 counsel for the applicant requested a copy of the record of proceedings under the Freedom of Information Act (FOIA) and an extension of time within which to file a brief in support of the applicant's appeal. On August 3, 2007 the AAO granted counsel's request, giving her 45 days after the completion of the FOIA request to submit a brief or additional evidence. According to the record, the FOIA request was completed on February 25, 2009 and no brief or additional evidence has been submitted or received thus far. 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).

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).

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. 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, "[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 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 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.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The applicant stated during his interview on September 26, 2005 that he had resided in the United States continuously since January 1981. As evidence, the applicant submitted various documents including photocopies of his individual tax returns filed between 2002 and 2004; a photocopy of a receipt dated December 21, 1983; several photocopies of envelopes with stamps and postmarks; and 14 affidavits.

The applicant's tax returns will not be considered since they do not relate to the requisite period. The photocopy of the receipt has no probative value since it contains no information about what it was for, where it was issued, or whether or not it was issued to the applicant. The envelopes with stamps and postmarks are relevant and credible to show that the applicant probably was present in the United States in 1981 and 1982, but without any corroboration from other

contemporaneous documents, they are not probative as evidence of the applicant's continuous residence in the United States throughout the entire requisite period.

_____ indicates in his two sworn statements that the applicant lived with him and worked as his housekeeper in his Chicago, Illinois apartment from March 1982 to October 1985 but does not explain with sufficient detail how he first met the applicant in the United States, whether the applicant paid rent or shared utility bills with him, how he dates the applicant's employment with him between March 1982 and October 1985, or other details about his relationship with the applicant to establish the credibility of his assertions. Additionally, the affidavit lacks probative value as the affiant fails to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide the exact period of the applicant's employment, the description of the applicant's duties as a housekeeper, the employment records from which the information was taken, if any, the place where such records are located, and whether United States Citizenship and Immigration Service (USCIS) may have access to the records.

_____ states in his affidavit that the applicant worked at Boaseto Laundromat from January 8, 1986 to March 30, 1986, but similar to the _____ affidavit, _____ affidavit lacks probative value since he fails to provide information about where the applicant resided at the time of employment, what his specific duties were with the company, whether or not the information was taken from official company records, where such records are located, and whether USCIS may have access to the records.

_____ claims in his affidavit that the applicant stayed with him in his apartment in Bronx, New York from October 1985 to May 1987. In another affidavit, _____ indicates that the applicant started to work at Okyeman Coin Laundromat, Inc. from March 1986. Neither affidavit contains specific information about the applicant's life and residence in the United States during the requisite period. The affiant, for instance, does not indicate where or under what circumstances he first met the applicant. His brief reference to residing with the applicant between October 1985 and May 1987 is not persuasive and not probative as evidence of the applicant's residence in the United States during the period specified in his affidavit. Nor is his statement that the applicant worked at Okyeman Coin Laundromat, Inc. from March 1986. No evidence such as rent receipts, lease agreement, or other contemporaneous documents has been submitted to establish the applicant's residence with _____ or employment at Okyeman Coin Laundromat, Inc. The affidavits have minimal weight as they lack relevant detail and are not accompanied by supporting documentation.

_____ declares in his affidavit that the applicant has been a member of the Presbyterian Church since October 1985, but he fails to offer specific information about the applicant's membership as required by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). For instance, the affiant fails to state the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during his membership period, how the affiant knows the applicant, and where he acquires the information relating to the applicant's membership in

the organization. Since the affidavit fails to mention most of the information about the applicant's membership as prescribed by the regulations and because it only testifies to the applicant's presence in the United States since 1985, it will be accorded minimal weight as evidence of his eligibility for the benefit sought.

The remaining eight affiants generally state that they have known the applicant since 1981. Some indicate they met the applicant when he visited their home in Chicago in 1982. Most simply list the applicant's addresses in the United States since 1981. None of the affiants states with any specificity how he or she first met the applicant, where he worked or what he did in the United States during the requisite period, or provides other details about the applicant's life in the United States to establish the credibility of their assertions. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982. Taken individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the entire requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record detract 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.

Beyond the decision of the director, the applicant appears to be inadmissible, and thus ineligible for the benefit sought. During his interview with an immigration officer on September 26, 2005 the applicant stated under oath that he had used someone else's passport to enter the United States in June 1987. At part #29 of the applicant's Form I-687 filed in 1989, the applicant also indicated that he entered the United States with someone else's passport and visa. The applicant is inadmissible for entering the United States in June 1987 by fraud, in violation of section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). Even though the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), and although the applicant has submitted the application to waive his inadmissibility, the application has not been adjudicated and the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.