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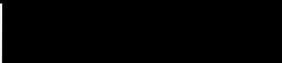


U.S. Citizenship
and Immigration
Services



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FILE:



Office: LOS ANGELES

Date:

JUN 22 2009

MSC-06 096 14545

IN RE:



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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India who claims to have lived in the United States since April 1981, 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 January 4, 2006. The director denied the application, finding 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.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for legalization.

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. 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 (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 applicant claimed that he entered the United States with his family in April 1981, but did not submit any documentation of his entry in 1981. The record reflects that the applicant, who was born on December 13, 1977, was about three years old at the time of his alleged entry into the United States with his family. The applicant did not submit any credible documentation from his mother to establish such entry. For someone claiming to have lived in the United States since April 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or hospital records which is reasonable to expect from a child of three in 1981.

The record includes a photocopied summary of the applicant's immunization record as compiled by Alvarado School in Rowland Heights, California on January 7, 1991, on a California School Immunization Record Form. The summary was compiled from the immunization record provided by the applicant's parents to the school on January 5, 1988 as part of the requirement for applicant's admission into California Schools. The first entry was on March 3, 1978, when the applicant was about three months old and about three years prior to the applicant's alleged entry into the United States. The last entry was on December 30, 1987. The applicant did not submit a copy of the original immunization record from which the school compiled the summary to verify where he received the various immunizations. The applicant's failure to submit any credible documentary evidence to establish when he first entered the United States, and the fact that the first entry on the immunization record was in March 1978, strongly suggest that the applicant received all the immunization in India. There is no indication in the record that the applicant was administered the immunization in the United States. Therefore, the California School Immunization Record has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period for legalization.

The record includes a copy of a school transcript from the Los Angeles Unified School District showing the applicant's attendance from 1992 to 1994. This record is outside the requisite period and has little probative value as evidence of the applicant's residence in the United States during the requisite period. The applicant did not submit any school records from the 1980s, which is expected from the applicant who was only three years in 1981.

The record also includes a series of affidavits – dated in 2005 – from individuals who claim to have known the applicant, his mother and his sister in the United States during the 1980s. None of the affiants claim to have known the applicant personally or give account of the applicant's residence in the United States during the 1980s. The affiants provided very little details about the applicant and his family's life in the United States during the 1980s, such as which school the applicant attended, where the family lived during the 1980s and the nature and extent of their interactions with the applicant and his family. The affidavits are not accompanied by any documentary evidence of the affiants' own identities, nor photographs, letters, or other documentation demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1981 to 1988.

As discussed above, the applicant has not submitted sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through the date of filing his application. 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 she is eligible for the benefit sought.

The AAO notes that the applicant was charged with one count of false forge instrument, and willful misrepresentation of a material fact, which could make him inadmissible into the United States. However, the actual court records are not currently contained in the record and the applicant's criminal history will not be used as a basis for dismissing his appeal.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.