

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



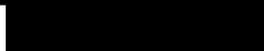
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



L1

FILE:



Office: CHICAGO

Date: MAR 03 2010

MSC 05 230 13292

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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


Perry Rhew
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, or *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, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director noted that the applicant had made two lawful entries, with a B-2 nonimmigrant visa, on June 14, 1985, and again on August 8, 1987. The director determined, therefore, that the applicant cannot establish his continuous unlawful residence for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the applicant has submitted sufficient evidence to establish his eligibility for Temporary Resident Status. Counsel does not submit additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *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 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, 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant is a native of India who claims to have resided in the United States since September 1981. He filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on May 18, 2005.

In the Notice of Decision, dated September 26, 2007, the director denied the instant application after determining that the evidence provided was insufficient to establish the applicant’s unlawful continuous residence in the United States during the requisite period. The director noted that the applicant had made two lawful entries, with a B-2 nonimmigrant visa, on June 14, 1985, and again on August 8, 1987. The director determined, therefore, that the applicant cannot establish his continuous unlawful residence for the duration of the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The record of proceedings contains evidence, including, cancelled checks, receipts, and Social Security records. Cumulatively, the evidence establishes the applicant's continuous residence since 1986.

However, contrary to counsel's assertion, the applicant has failed to submit sufficient evidence to establish his continuous unlawful residence for the period prior to January 1, 1982 to 1986.

The evidence provided for the period from prior to January 1, 1982 to 1986 consists of the following:

A letter of employment, dated June 11, 2003, from [REDACTED] [REDACTED], stating that since 1983 the applicant "has worked for [his] companies in various positions and in different locations." [REDACTED], however, does not indicate the capacity in which the applicant was employed; the location(s) of the employment; and the duration of employment at the "different locations;" and, when in 1983 the employment commenced. It is also noted that the affiant failed to provide his own address and telephone number.

It is noted that the letter failed to provide the applicant's address at the time of employment. Also, the letter failed to show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, therefore, is not probative as it does not conform to the regulatory requirements.

The applicant submitted two stamped envelopes. One of the envelopes is addressed to him at [REDACTED] [REDACTED] and bears a non-US postmark dated October 10, 1982. The envelope, however, does not establish the applicant's continuous residence prior to or after the postmark date. The second envelope is addressed to the applicant at [REDACTED] [REDACTED], but does not have a clear postmark. It is noted that the envelopes do not bear US postmarks. The applicant also provided a note written on a prescription form from [REDACTED] [REDACTED], dated January 16, 1984, stating that the applicant was seen in his office. However, that note does not establish the applicant's continuous residence prior to or after the date of the note. In addition, the applicant submitted a course registration form, dated "Winter 1983." The form, however, is not probative as it does not indicate the institution that issued the form; when, whether, and where the courses were held; and, whether the applicant attended the courses.

Contrary to counsel's assertion, as discussed above, the evidence provided lacks essential details and is not probative of the applicant's residence. In addition, the applicant has provided questionable applications and documentation. For example, the applicant submitted a letter of employment from [REDACTED] Veterans Assistance Program, Illinois, stating that the applicant had been employed by his companies at various locations since 1983. However, on his Form I-687 application, dated January 20, 2001, the applicant does not indicate having been employed by [REDACTED] [REDACTED] until August 1987. In addition, on his Form I-687, filed May 18, 2005, the applicant listed [REDACTED] as his employer from September 1983 to May 1986. Yet, his Social Security earnings statement does not show earnings prior to 1987.

In addition, the applicant made two lawful entries, with a B-2 nonimmigrant visa, on June 14, 1985, and again on August 8, 1987. In order for the applicant to obtain a B-2 nonimmigrant visa, he would have to provide proof that he had worked and resided in India. He claims, however, that he has resided in the United States in an unlawful status since September 1981.

These unexplained discrepancies cast considerable doubt on whether the evidence provided by the applicant in support of his application is genuine, and whether he has resided in the United States since prior to January 1, 1982, as he claims. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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