



U.S. Citizenship
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FILE:



Office: TAMPA

Date: AUG 01 2001

MSC-05-001-10344

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Robert P. Wiemann, 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 District Director, Miami, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts he has lived in the United States since 1982. He attempts to account for the contradictions in his previously furnished evidence and testimony.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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.

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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on October 1, 2004. Part 30 of the application requests the applicant to list all of his residences in the United States since his first entry. The applicant responded that he resided at Farm Workers Housing in Belglade, FL from 1981 until 1982; [REDACTED] Haines City, FL from 1982 until January 1984; and [REDACTED] Haines City, FL from January 1984 until present. The applicant also listed an address at [REDACTED] Haines City, FL, however, he failed to indicate the dates of his residence at this address. Part 33 of the application requests the applicant to list his employment in the United States since his entry. The applicant responded that he was employed with [REDACTED] Hudson Valley, NY as an apple picker; U.S. Sugar, Belglade, FL as a cane cutter; Atlantic Sugar, Belglade, FL as a cane cutter; and Florida Labor Solutions, Inc., Belglade, FL as a farmer. The applicant failed to indicate the dates of his employment at these locations; therefore it is unclear when the applicant was employed with each employer. The applicant has failed to provide credible and probative information on his Form I-687 application of his residence in the United States during the requisite period.

An alien applying for adjustment of status under this part 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. 8 C.F.R. § 245a.2(d)(5). 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. *Id.* The applicant has submitted various documents in support of his application to demonstrate his residence in the United States. For the purpose of this proceeding, this decision will focus on the documentation that would corroborate the applicant's residence in the United States during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claimed continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). Pursuant to this regulation, the applicant submitted two letters in support of his application to establish his residence in the United States during the requisite period. The applicant submitted a letter from ██████████ which provides, "Cleveland Francis was a tenant of mine from 1985 to 2005. His address is below: ██████████ Haines City, FL 33844." This letter is not credible because it contains several notable discrepancies. The address provided in this letter is inconsistent with a copy of applicant's Florida Identification Card, issued August 31, 1993. This ID card provides that the applicant's address is ██████████ Haines City, FL 33844. The letter also does not provide any contact information for ██████████ to verify his testimony nor does it contain ██████████'s signature. Further, the letter fails to provide any details on ██████████ contact with the applicant during the requisite period. The applicant also submitted a letter from ██████████ which provides, "██████████ is a friend of mine who lived with me from 1982 until 1985 at the address below: ██████████ Haines City, FL 33844." However, this information is inconsistent with the applicant's Form I-687 application, which provides that he resided at ██████████ Haines City, FL from 1982 until January 1984. Therefore, this letter is also not credible and probative of the applicant's residence in the United States.

The applicant was notified of these discrepancies in the director's denial notice. On appeal, the applicant provided a written statement to address the contradictions. The applicant's written statement provides:

When you asked for evidence of my residence, I thought you only wanted a statement verifying my residence with the person's signature as a true statement. The directions were not clear to me. What other information do you need to be included on the statements to verify my residence? I did not know you wanted the information hand written. I had the information typed and the persons signed the statements to verify that the information was true. I could not locate [REDACTED] I am still trying to locate him. I did not have the sufficient time to collect all the needed information before my interview date because I received my appointment letter five days before the interview . . . I have to depend on others to help me with written information and directions because I am illiterate and once again, cannot read or write. However, I have learned to sign my name. My first Florida ID was issued in Belleglade, Florida in the 1980's. I changed it in 1993 when I was living at [REDACTED] in Haines City, Florida. Sometime in 2005 after I moved to [REDACTED] (one street over), I changed my ID so that my new address showed on the ID card. The agency did not change the issue date because the ID card was not expired as yet. If you look closely at the very bottom, you will see the duplicate date of 08-08-2005.

The applicant has provided a reasonable explanation of the inconsistency between his address as indicated in the letter from [REDACTED] and his Florida Identification Document. However, the applicant failed to account for the other noted discrepancies in the two letters he submitted. Moreover, the applicant failed to provide any other additional evidence with his appeal to corroborate his application. As noted above, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6).

The applicant's record shows that he also submitted with his Form I-687 application a copy of his Jamaican Identity Card, which provides the following:

The Bearer, [REDACTED] is a citizen of Jamaica. I further certify that the identifying data given below relates to the individual named hereinabove, that he has been authorized to go to the United States of America for temporary agricultural employment, and that upon his return from the U.S.A. he will be permitted to re-enter Jamaica.

The applicant submitted a copy of a Jamaica entry stamp on the back of his identity card, which provides that he entered Jamaica on March 25, 1981. The applicant also submitted a torn or folded copy of another Jamaican Identity Card. The back of his card contains a Jamaica entry stamp dated March 31, 1983. These two documents are credible evidence of the applicant's absence from Jamaica in 1981 and 1983, however they are not probative of the applicant's residence in the United States during those periods. Although the applicant may have departed Jamaica with identity cards that allowed him to travel to the United States, there is no indication that the applicant actually entered the United States during those periods. The identity cards are only probative evidence that the applicant received permission from the government of Jamaica

to travel to the United States and then return to Jamaica. Even if these cards established that the applicant entered the United States in 1981 and 1983, they are not probative of the applicant's continuous residence in the United States during the requisite period. The director's Notice of Intent to Deny (NOID), states that these "J" cards do not serve as entry dates into the U.S. The applicant has failed to address this issue either in response to the NOID or on appeal. As stated above, the "preponderance of the evidence" standard requires the evidence to demonstrate that the applicant's claim is "probably true." *Matter of E-M-, supra*. Based on the aforementioned reasons, these cards do not establish by a preponderance of the evidence that the applicant continuously resided in the United States during the requisite period.

The absence of sufficiently detailed supporting 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 verification. Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.