



U.S. Citizenship
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FILE:

MSC 04 352 10120

Office: NEW YORK

Date:

AUG 15 2007

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 district 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 states that there appears to be some confusion in his case as the district director made reference in the denial decision to documents that he did not submit in support of his Form I-687 application. The applicant requests that his case be reviewed.

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. See 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 16, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED], Jamaica, New York” from March 1981 to March 1988 and at [REDACTED] Bronx, New York” from October 1999 to December 2001. The applicant did not list any addresses in the United States between 1988 and 1999. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked as a street vendor in downtown Manhattan, New York, from March 1981 to March 1988.

At his interview with a CIS officer on March 15, 2006, the applicant stated that he first came to the United States in December 1981. The applicant, who stated he was 15 or 16 years old at the time, explained that he traveled to Florida by boat and entered the United States without inspection. When asked if he had traveled outside the United States, the applicant stated that he

was in Canada for “a couple of months in 1986” and that he was in Senegal from March 1988 to October 1999.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a fill-in-the-blank statement from [REDACTED]. [REDACTED] stated that he first met the applicant on December 25, 1981 at a Christmas party held at “[REDACTED] New York, New York.” [REDACTED] further stated that he used to see the applicant with his uncle every day at their vendor table located at the corner of 40th or 53rd and Broadway, New York, New York. However, [REDACTED] did not provide any relevant and specific verifiable information such as the applicant’s addresses in the United States during the requisite period.

The applicant also provided a fill-in-the-blank statement from [REDACTED]. [REDACTED] stated that he first met the applicant in February 1982 in a subway station during rush hour in New York, New York. [REDACTED] further stated that the applicant’s uncle, [REDACTED] told him the applicant had arrived in the United States in Florida “about 6 to 8 months before February 1982” by sea and entered “in Florida border.” [REDACTED]’s statement is derived from second-hand information provided to him by the applicant’s uncle and has little corroborative value. [REDACTED] did not provide any relevant and specific verifiable information such as the applicant’s addresses in the United States during the requisite period.

On December 16, 2005, the district director issued a notice informing the applicant of her intention to deny his application unless he could submit additional evidence to corroborate his claim of continuous residence in the United States during the requisite period. The applicant, in response, stated that he doesn’t have any evidence other than two affidavits already submitted to corroborate his claim of continuous residence in the United States during the requisite period.

The district director denied the application on July 7, 2006, because the applicant failed to establish continuous residence in the United States during the requisite period. The district director stated in the denial decision:

On 4/6/06, this office received your response to the Notice of Intent to Deny. The response consists of an affidavit from you, which does not address any of the pertinent issues mentioned in the Notice of Intent to Deny and no additional evidence has been submitted. One item is an affidavit from [REDACTED] and the other appears to be a receipt for the purchase of furniture from AOP New & Used Furniture. The affidavit is not amenable to verification and the receipt is from a company that is not registered in the State of New York.

On appeal the applicant states:

It seems to me there is a tremendous confusion in my case. In fact I never, ever provided any Affidavit neither a receipt for the purchase of furniture from AOP New & Used. I am really surprised that you mentioned in the Notice of Decision that I have submitted an Affidavit from [REDACTED] In my knowledge I don’t

know anybody in that name. Also I never purchased any furniture and don't even know any Company named like that. Obviously there is a big mistake in my file. Therefore I think you should reconsider this decision and correct the mistake in my case.

The applicant is correct in his statement that he did not provide a personal affidavit, an affidavit from [REDACTED] and a furniture receipt from AOP New & Used Furniture in response to the Notice of Intent to Deny. As previously stated, the applicant stated in response to the notice of intent to deny that he had no other evidence to submit to establish his claim of continuous residence in the United States during the requisite period. It appears that the district director was referring to evidence relating to a different Form I-687 application filed by another individual, not the to evidence submitted by the applicant. Therefore, the district director's statements cited above are hereby withdrawn.

Nevertheless, the fact remains that the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two people concerning that period, both of which lack sufficient verifiable information to corroborate the applicant's claim.

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 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.

It is noted that the applicant's 2004 Federal Bureau of Investigation fingerprint results report revealed that the applicant was arrested in New York, New York, on August 20, 2004, and charged with trademark counterfeiting 2nd, resisting arrest, and violation of local law. The record does not contain any court documents revealing the final court disposition of this arrest. These charges must be addressed in any further proceeding before CIS.

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