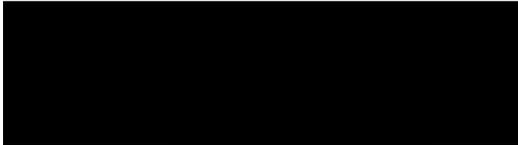




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FILE: MSC-05-306-12620

Office: LOS ANGELES

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

The director denied the application, finding that the applicant had failed to establish 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.

On appeal, the applicant states that the director incorrectly noted his date of birth in her Notice of Denial as November 4, 1987 when it is actually October 20, 1981. The applicant enclosed a copy of the decision letter he received with the incorrect birth date circled in support of his appeal. He did not submit additional evidence to establish that he maintained continuous residence in the United States from January 1, 1982 through May 4, 1988.

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) and 8 C.F.R. § 245a.2(b)(1).

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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)(1).

The regulation at 8 C.F.R. § 245a.10 states, in pertinent part that spouses or children as defined at section 101(b)(1) of the Immigration and Nationality Act of individuals who attempted to file or were discouraged from filing an application for legalization during the original application period are eligible to apply for legalization.

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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).

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.

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 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 or his parents 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 August 2, 2005. 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 showed his first address in the United States to be in Redlans [sic.], California, from 1990 to 2000. He listed his second and final address as being in San Bernardino, California, from 2000 until the date that he signed his Form I-687, May 21, 2005. At part #32, where applicants were asked to list

absences from the United States, the applicant showed one absence. He listed this absence as having occurred from October 1981 to November 1990 and stated that the purpose of his absence was "residence." Similarly in part #33, he showed his first employment in the United States to be for working as a self-employed gardener in Redlans [sic], California from 1996 to 1996 and then employment as a laborer in Los Angeles, California from 1996 to the time he signed his Form I-687 in May of 2005. Though the applicant submitted information about employment from only the year 1996 forward, it should be noted that he would have been 15 years old in 1996. Therefore it is reasonable that he would not have been working before that time.

The applicant submitted information regarding his father's employment in section #33, writing the name and address a company that employed his father as a farm laborer from January 1982 to 1986 in this section. The information in this section of his Form I-687 is consistent with a verification of employment and identity letter submitted by this contractor, [REDACTED] on behalf of the applicant's father, [REDACTED] [sic]. This letter lists the applicant's father's name, rather than the applicant's, and states that the applicant's father was an employee who harvested produce from January 1982 to April 1986.

Though the applicant listed the contractor [REDACTED] in section #33 of his Form I-687 when he was asked to list his own employer's names, in his interview with the CIS officer notes, the applicant claimed that he did not work on a farm from 1982 until 1986, as he would have been less than 3 months old in January of 1982. It appears that the interviewing CIS officer did note the employment verification letter submitted by the applicant and also noted that the applicant listed this employer when he was asked to list his employer's names in his Form I-687. However, it appears that the officer did not note that this letter was submitted to establish that the applicant's father, rather than the applicant, had worked in the United States starting in January of 1982. Not addressed is the fact that the letter is from a California company and the applicant indicated in his interview that his family lived in Texas rather than California during the years 1982 to 1986.

It is noted that the director incorrectly stated that the applicant's birth date was November 4, 1987 [sic] in her Notice of Denial and that the applicant's correct date of birth is actually October 20, 1981. It is further noted that the applicant consistently represented his date of birth as October 20, 1981 and that this date falls before January 1, 1982.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation:

- Student identification cards from San Bernardino Adult School from the year 2003.
- A Verification of Employment and Identity letter from [REDACTED] located in Borrego Springs, California signed by [REDACTED] stating that the applicant's father, [REDACTED] [sic], worked as a farm laborer from January 1982 to April 1986. This letter was signed on May 21, 2005.
- A birth certificate both in its original Spanish and in English stating that the applicant's father's name is [REDACTED] and that his mother's name is [REDACTED] and that

they both lived in Mexico at the time of the applicant's birth. The birth date listed for the applicant is October 20, 1981. It is noted that the applicant's father's last name is incorrectly translated on the English translation of the applicant's birth certificate. The English translation lists his father's full name as, "[REDACTED]" rather than "[REDACTED]" which is the name of the applicant's father in the Spanish version of the applicant's birth certificate.

- California Driver's license and Identification card, both with the number [REDACTED] that both expire September 12, 2006 and list the applicant's date of birth as October 20, 1981.
- An Employment Authorization card issued on September 13, 2005 listing the applicant's date of birth as October 20, 1981.
- A Social Security Card issued to the applicant and an additional birth certificate issued to the applicant's son.
- The applicant's son's birth certificate, listing the applicant's date of birth as October 20, 1981.
- A letter that was notarized on April 24, 2006 that is signed by the applicant's uncle, [REDACTED]. This letter states that [REDACTED] has known the applicant since he was a small boy. This letter does not provide an address in the United States at which [REDACTED] can verify the applicant lived during the statutory period nor does it provide the date from which [REDACTED] has known the applicant.
- A signed letter stating that the applicant has worked for [REDACTED] in Colton, California since 2003.
- A sworn statement that is signed by the applicant but not the interviewing officer on April 25, 2006. This statement is written in Spanish and not translated into English in the record. However, if it were translated into English, it would read, "Ever since I can remember my parents have told me that they brought me to this country when I was three months old and I have spent the rest of my life here without leaving. I was brought here in the year 1981."

On the applicant's Form I-687, which he signed under penalty of perjury, he showed that he resided in Mexico from 1981 until 1990. He also showed residences in the United States only since 1990. The only evidence submitted with the applicant's Form I-687 application that is relevant to the 1981 to 1988 period in question showed the applicant's father worked in the United States from January 1982 to April 1986. The applicant's testimony and a sworn statement that is not signed by the CIS officer but that was presumably taken by that officer at the time of the applicant's interview contradicts what is in his application, stating that the applicant has continuously resided in the United States since 1981. However, the applicant has not submitted any evidence that either explains the reasons for these contradictions or establishes that the applicant did continuously reside in the United States during the statutory period.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In denying the application the director noted the above, and the fact that the applicant's claim at the interview to have commenced residing in the United States in 1981 was unsupported, and contradicted what the applicant himself had put forth on the application. Though the director erroneously stated that the applicant's date of birth was November 4, 1987, she did establish that the applicant did not meet his burden of establishing that he had resided continuously in the United States from January 1, 1982 until the date that he or his parent's originally attempted to file a Form I-687 during the original filing period of May 5, 1987 to May 4, 1988.

On appeal the applicant does correctly explain that the director erred in stating that he was born on November 4, 1987. He furnishes a copy of the Notice of Denial he received from the District Director and a brief statement reiterating his correct date of birth. However, [REDACTED] does not submit additional evidence to establish that he resided continuously in the United States from January 1, 1982 until May 4, 1988.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and though he correctly pointed out that the director had erred in stating that his birth date was November 4, 1987 when it was consistently listed on all of his documentation as October 20, 1981, he did not submit any additional evidence to establish that he had maintained continuous residence in the United States by a preponderance of the evidence.

The absence of sufficiently detailed 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 between his oral testimony and information provided on his Form I-687 application 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.