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Office: CHICAGO, IL

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MSC 06-031-10251

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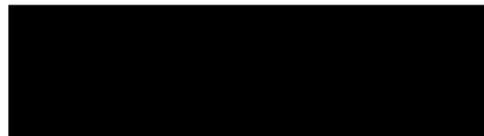
Applicant:



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. All documents have been returned to the office that originally decided your case. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, 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 District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application, finding that the applicant failed to establish that he 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. Specifically, the director noted that he could not verify evidence submitted by the applicant as proof of his employment during the requisite period. The director further noted that evidence in the record was not consistent regarding the applicant's duties at that place of employment. Because the director found that the record contained these discrepancies, he found the applicant had not met his burden of establishing, by a preponderance of the evidence, that he had resided continuously in the United States for the duration of the requisite period as applicant's for Temporary Resident Status are required to do pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5).

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish continuous, unlawful residence in the United States during the requisite period. He attempts to explain the apparent contradictions in the evidence as noted by the director and argues that the applicant submitted sufficient evidence to prove his continuous residence by a preponderance of the evidence.

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).

Applicants 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).

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 applicant 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.

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 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 October 31, 2005. Part 30 of this application requests the applicant to list all of his residences in the United States since his entry. The applicant responded that during the requisite period he resided at [REDACTED] in Chicago, Illinois from May of 1980 to May of 1990. Part 33 of this application requests the applicant to list his employment in the United States since his first entry. The applicant responded that he has been employed by [REDACTED]'s Winery as a dishwasher from November of 1980 until the present.

The record also contains a Form I-687 submitted in 1990 to establish class membership. It is noted that on this Form I-687 the applicant shows his address to be [REDACTED] rather than at 1560 of that same street. All other information on the applicant's Form I-687 submitted in 1990 is consistent with information on his subsequently filed Form I-687. It is noted here that this Form I-687 requests the applicant to list the names and dates of birth of his children. He shows he had two children born during the requisite period, [REDACTED] who was born February 4, 1983 and [REDACTED] who was born April 10, 1986.

The record contains not [REDACTED] applicant's interview that was conducted subsequently to his filing his I-687 to establish class membership. Here, the applicant consistently testified regarding

both his employment and address of residence during the requisite period. He stated that he first entered the United States in May of 1980 and first began working in November of 1980 at ██████████ Winery. The applicant indicated his wife entered the United States on two occasions. She entered both in May of 1982 and stayed for two (2) months and then entered in July of 1985 and stayed for three (3) months. It is noted that the births of the applicant's children during the requisite period are each approximately nine (9) months after one of the applicant's wife's visits.

The record further contains notes from the applicant's interview with a CIS officer conducted after he submitted his Form I-687 filed pursuant to his class membership in the CSS/Newman Settlement Agreements in 2005. It is noted that that applicant provided consistent testimony regarding when he entered the United States, when he began working and when his wife visited him in the United States at the time of this interview.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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. An applicant may also submit affidavits and any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documents that are relevant to the requisite period: two letters from his employers, numerous affidavits from friends and relatives, envelopes postmarked with dates relevant to the requisite period, and utility bills.

Details of some of these documents are as follows:

- The applicant submitted an employment letter from ██████████ the manager of ██████████'s Winery. This letter is dated October 14, 2004 and states that the applicant has been employed at this restaurant since November of 1980. The letter indicates that the applicant works at this restaurant full time doing odd jobs and cleaning. It is written on letterhead from the restaurant and provides a phone number at which ██████████ can be reached if further information is needed. The record does not indicate that the Service attempted to contact ██████████ to verify information in this letter.
- The applicant submitted a letter from ██████████ that was notarized on October 2, 1990. This letter states that the applicant has been employed at ██████████ Restaurant since November of 1980 doing odd jobs and cleaning. ██████████ provides a phone number at which she can be reached if further information is needed. It is noted that the record indicates that the restaurant was contacted to verify this employment verification letter and told that ██████████ was deceased.

- It is noted that the AAO has verified that [REDACTED]'s Winery Restaurant opened in 1973, seven (7) years before the applicant claims he began working at that restaurant. It is further noted that in addition to these employment letters, the applicant has provided a letter from the brother of the owner of this restaurant, [REDACTED] and W-2 forms showing that the applicant works for this restaurant.
- A letter from [REDACTED] which states that [REDACTED] is the brother of the owner of the applicant's place of employment. In this letter [REDACTED] states that he first met the applicant in November of 1980 when he was working at his brother's restaurant. Though not required to do so, [REDACTED] has provided proof of his identity with his letter.
 - It is noted here that in his letter, [REDACTED], indicates that the applicant was his co-worker in 1980 in his brother's restaurant. In his Notice of Denial, the director noted that this letter indicated that the applicant worked in [REDACTED]'s Winery as a cook. However, the sentence in which the director found [REDACTED] referred to the applicant's employment as a cook is not clearly written. It reads, "My relationship to [REDACTED] is that of a co-workers [sic] in November 1980 when he first started working at my brothers [sic] restaurant named [REDACTED] with location [sic] at [REDACTED] in Oaklawn IL. 60453 also was working [sic] as a cook in the restaurant when he first started in the year 1980." This could indicate that [REDACTED] worked as a cook in that restaurant in 1980 when he first met the applicant or it could indicate that both men worked as cooks at that time. However, this letter does not indicate that the applicant continues to work in that capacity at the present time or to indicate whether his duties and responsibilities changed at any point in time after 1980. Therefore, the AAO finds that the discrepancy noted by the director is not clearly indicated by the language of this letter.

On May 25, 2006, the director issued a Notice of Decision to Deny the application. In doing so, the director stated that he could not verify an employment letter in the record from the manager of the restaurant at which the applicant worked during the requisite period and continues to work because the manager of this restaurant, [REDACTED] who submitted that particular letter in 1990, was deceased. It is noted here that the record also contains a subsequently filed employment letter from the current manager, [REDACTED]. It is noted that the phone number provided in both letters from this place of employment is the current phone number of the applicant's place of employment. The record does not indicate that the current manager of the restaurant has been contacted by the Service. The director further found that a letter from [REDACTED], the brother of the owner of the restaurant where the applicant worked during the requisite period and continues to work, indicates that the applicant was employed as a cook. The director noted that other documents in the record show the applicant was employed as a dishwasher. Because the director found that the record contained these discrepancies, he found the applicant had not met his burden of establishing that he had resided continuously in the United States for the duration of the requisite period as applicant's for Temporary Resident Status are required to do pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5).

On appeal, counsel asserts that the evidence submitted by the applicant is sufficient to establish by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. Counsel asserts that the Service misinterpreted the letter submitted by [REDACTED]

██████████ who was explaining that he, and not the applicant, was a cook when the applicant began working at ██████████ restaurant in 1980. Counsel goes on to say that the letter from the previous manager of ██████████ restaurant notarized it at the time she submitted it in 1990 and though information in this letter cannot be verified because the affiant is deceased, counsel argues that it should still be considered as sufficient evidence. It is noted that the AAO finds that it is not reasonable to penalize an applicant because they submitted a letter seventeen (17) years ago from an affiant who is now deceased. The record does not indicate whether ██████████ the current manager of that restaurant was ever contacted in an attempt to verify the applicant's claimed dates of employment.

The director did not deny the application based on the applicant's failure to demonstrate class membership. Thus, the special provisions of the CSS/Newman Settlement Agreements which relate to cases in which the director finds that an applicant was not able to demonstrate class membership do not apply.

The contemporaneous documents submitted by the applicant appear to be credible. Relevant letters, declarations and affidavits submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses.

The applicant gave testimony that was consistent with information in the record when he testified.

The director has not established: that the information on the supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on the present application or previous applications filed with the Service; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant provided evidence that establishes by a preponderance of the evidence that he entered the United States before January 1, 1982 and he maintained continuous, unlawful residence status from such date through the date that he was dissuaded from filing the Form I-687. Consequently, the applicant has overcome the particular basis of denial cited by the director.

Thus, the applicant's appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.