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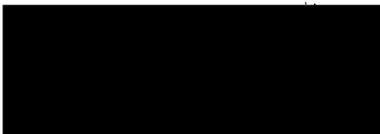
U.S. Department of Homeland Security
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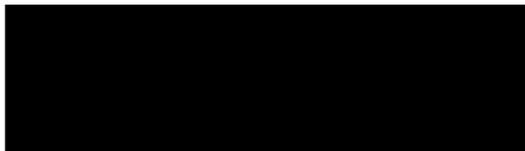
Applicant:



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. 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 Director, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director observed that the applicant failed to submit any supporting evidence in support of the initial application, or in response to the director's Notice of Intent to Deny issued on March 29, 2006. The director acknowledged the applicant's counsel's request for additional time to respond to the Notice of Intent to Deny, but noted that no additional evidence was submitted within the timeframe requested by counsel. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the director failed to properly consider the evidence submitted as sufficient to warrant the approval of the application. Counsel contends that the sole basis for denial appears to be the applicant's failure to submit any evidence in support of his claims. Counsel argues that the director "completely failed to consider the evidence that was properly submitted on March 29th 2006." Counsel states that the director failed to comment in regard to the types of evidence submitted, the relevance of the evidence, or the credibility of the affiants and their attestations, thus leaving the applicant with little information on which to base his arguments on appeal. Counsel asserts that the applicant submitted three attestations from credible witnesses to establish his continuous unlawful residence from before January 1, 1982 until May 4, 1988, with no gaps or unexplained periods within the requisite time.

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 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. 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. 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. 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.* 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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. 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 Richmond, Virginia from November 1981 until October 1984. He indicated that he resided in Corona, New York from October 1984 until January 1994. Similarly, at part #33, he showed his first employment in the United States to be at a Red Lobster in Richmond, Virginia from 1981 until 1984, and indicated that he subsequently worked for Indian Coffee in New York, New York from 1984 until 1987.

In support of his application, the applicant provided no proof of his identify and submitted no documentary evidence to establish continuous unlawful residence in this country since prior to January 1, 1982 until the

date on which he claims to have attempted to file a completed legalization application. The application consisted of a completed Form I-687, Form I-687 Supplement and photographs of the applicant.

As noted above, 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). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3), documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period includes, but is not limited to, the following: 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 any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The director issued a Notice of Intent to Deny the application on March 29, 2006, advising that the applicant had failed to submit evidence that he entered the United States before January 1, 1982 and that he resided in a continuous unlawful status from before 1982 until the date he was turned away by the INS when he attempted to apply for legalization. The director further determined that the applicant had not provided evidence that he was continuously physical present in the United States from November 6, 1986 until the date on which he attempted to file a legalization application. The director afforded the applicant 30 days in which to provide evidence in support of his application.

On May 1, 2006, the director received a letter from counsel, dated April 26, 2006, in which she requested that the applicant be afforded 60 additional days in order to submit additional evidence. Counsel explained that the applicant needed additional time to contact affiants who were not immediately available, and to collect "other additional evidence."

The director denied the application on July 17, 2006. In denying the application, the director noted that the petitioner had failed to provide any additional evidence in response to the Notice of Intent to Deny as of that date. The director determined that the applicant had not met his burden of proof based on his failure to submit any supporting evidence in support of his application or in response to the Notice of Intent to Deny.

On appeal, counsel for the applicant states that the director "completely failed to consider the evidence that was properly submitted on March 29, 2006," and erroneously denied the application based on the applicant's failure to submit any evidence in support of his claims. Counsel also asserts that the director "failed to mention the items of evidence submitted on May 1st, 2006." Counsel references "three attestations from credible witnesses" that establish the applicant's continuous unlawful residence, and states that as the applicant was unlawfully working and residing in the United States, "it is understood that he would have encountered difficulty in obtaining other forms of documentary evidence to establish his continuous presence."

Contrary to counsel's assertions, the record shows that the applicant submitted no supporting evidence when the application was filed on March 29, 2006. Similarly, no "items of evidence" were submitted on May 1, 2006, other than counsel's request for an extension of time in which to file a response to the Notice of Intent to Deny.

However, the record does contain the three attestations referenced by counsel on appeal. The record shows that this evidence was received by CIS on July 6, 2006, more than 90 days subsequent to the issuance of the Notice of Intent to Deny. However, it is apparent that the evidence was not incorporated into the record of proceeding prior to the issuance of the director's Notice of Decision on July 17, 2006. The AAO conducts a de novo review, evaluating the sufficiency of all evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). Therefore, this evidence will be considered herein.

In response to the Notice of Intent to Deny, the applicant submitted a letter from [REDACTED] President of The Sikh Cultural Society, Inc., who states that the applicant resided at [REDACTED] in Corona, New York. Mr. [REDACTED] states that he first met the applicant in 1984 at The Sikh Cultural Society in Richmond Hill, New York, where the applicant worked as a volunteer by helping in the kitchen and helping to conduct an annual Sikh Day Parade in Manhattan. Mr. [REDACTED] states that he is still in touch with the applicant. Mr. [REDACTED] failed to indicate when the applicant's residence in Corona ended, whether there were periods of time during which he did not see the applicant, or whether he had any knowledge of the applicant's residences prior to 1984. Because of its significant lack of detail, this affidavit can be afforded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

The applicant also submitted a notarized letter from [REDACTED] who states that the applicant resided at [REDACTED] in Corona, New York. Mr. [REDACTED] states that he met the applicant at a function in 1987, and that they used to visit the same Gurdwara (Sikh temple). Mr. [REDACTED] indicates that he is still in touch with the applicant. Mr. [REDACTED] did not indicate when the applicant's residence in Corona ended, whether he was aware of the applicant's dates and location of residence prior to the unspecified date in 1987, or whether there were periods of time during which he did not see the applicant. Because of its significant lack of detail, this affidavit will also be given very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Further, it is noted that where asked to indicate all affiliations or associations with clubs, organizations, churches, etc. at question #31 on Form I-687, the applicant stated nothing. Therefore, the statements of Mr. [REDACTED] and Mr. [REDACTED] indicating that they were acquainted with the applicant during the requisite time period based on his active involvement in a religious organization contradict the applicant's own testimony that he had no affiliation or association with such an organization. Doubt cast on any aspect of the petitioner's proof may, of course, 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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the applicant submitted a form-letter affidavit from [REDACTED] who states that he currently resides in Wisconsin. Mr. [REDACTED] affirms that he has known the applicant since November 1981, and states that the applicant used to live at [REDACTED] in Richmond, Virginia. Mr. [REDACTED] verifies that the applicant was present in the United States in 1981. Mr. [REDACTED] does not state in what capacity he knew the applicant, how he met the applicant, whether he himself ever resided in Richmond, Virginia or Corona, New York, or how frequently he has seen the applicant since 1981. On appeal, counsel remarks that Mr. [REDACTED] is "an acquaintance and former roommate" of the applicant, which is insufficient to establish his actual relationship with the applicant and his knowledge of the applicant's continuous residence in the United States. Moreover, correction fluid has clearly been utilized in several places on this document, and the information on the form appears to have been handwritten by two different people, thus raising serious questions regarding its credibility. Because this affidavit is seriously lacking in detail and its content is suspect, it can be afforded minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with him. He has submitted attestations from individuals that lack detail, contradict statements made on his Form I-687, and can be given very little weight.

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 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.

Finally, the record as presently constituted does not contain proof of the applicant's identity, as required by 8 C.F.R. § 245a.2(d)(1). As the director failed to request this required evidence, this deficiency is noted for the record and will not be discussed further.

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