



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: Milwaukee
MSC 05 235 16034

Date: JUN 12 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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. [REDACTED] (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 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, counsel asserts that the applicant has established his continuous residence in the United States during the requisite period by a preponderance of the evidence. Counsel submits an affidavit from the applicant.

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 May 23, 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 indicated that he resided at “[redacted] Milwaukee, Wisconsin” from September 1981 to October 1985 and at “[redacted] Milwaukee, Wisconsin” from October 1985 to July 1988. At part #33, where applicants are asked to list all employment in the United States since first entry, the applicant stated that he was self-employed doing odd jobs in Milwaukee, Wisconsin, from December 1981 to June 1988. The applicant submitted with the application an attachment in which he stated, “I initially entered the United States, without inspection, in September 1981, near Blaine, WA border.”

At his interview with a CIS officer on January 25, 2006, the applicant stated that he first entered the United States from Mexico in 1981. This statement contradicts his prior statement that he first entered the United States near Blaine, Washington, in September 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit from [REDACTED] a resident of Bhulath, India, stating that the applicant lived in the United States from 1981 to 1988. Mr. [REDACTED] further stated that the applicant used to call him on the telephone once or twice a month during that period and sometimes sent him letters from America. However, Mr. [REDACTED] did not provide any verifiable information such as the applicant's addresses throughout the period from 1981 to 1988.

The applicant included an affidavit dated May 5, 2005, from [REDACTED] of Milwaukee, Wisconsin, stating that she met the applicant in mid-April 1981 at the Milwaukee County Museum when he asked her if she had change to make a phone call. Ms. [REDACTED] further stated that the applicant told her he had been in this country for a while and that he came to the United States without a visa from Mexico. Ms. [REDACTED] statement regarding the applicant's date and manner of entry into the United States is second-hand information provided to her by the applicant. Furthermore, Ms. [REDACTED] did not provide any verifiable information such as the applicant's addresses in the United States during the period in question.

The applicant also submitted an affidavit dated May 12, 2005, from [REDACTED] of Long Beach, California, stating that she met the applicant in April 1982 when her friend [REDACTED] came to visit her bringing the applicant with her. Ms. [REDACTED] explained that the applicant told her that he entered the United States from Mexico in 1982. Ms. [REDACTED] further stated that [REDACTED] would visit her from time to time during the period from 1982 to 1988 and the applicant would always come with her. Ms. [REDACTED] did not provide any verifiable information such as the applicant's addresses in the United States during the period from 1982 to 1988. Furthermore, Ms. [REDACTED]'s statement that the applicant told her he entered the United States in 1982 contradicts the applicant's claim that he first entered the United States in 1981.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish the applicant's continuous residence in the United States during the requisite period by a preponderance of the evidence. Counsel submits an affidavit from the applicant dated March 1, 2006, in which the applicant states that he entered the United States without inspection from Canada in April 1981 near the port of Blaine, Washington. This statement contradicts the applicant's previous claim during his legalization interview that he entered the United States from Mexico in 1981. It also contradicts the applicant's statement in his attachment to the Form I-687 application that he first entered the United States near Blaine, Washington, in September 1981. The applicant has not provided any explanation for these discrepancies in her claimed date and place of entry into the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent

on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, 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 three people concerning that period. Because these affidavits lack sufficient verifiable information, they cannot be given substantial evidentiary weight.

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 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.