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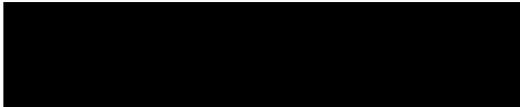
MSC-05-213-10428

Office: NEW YORK

Date:

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, and that decision 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. Specifically, the director stated in her Notice of Intent to Deny (NOID) that though the applicant submitted affidavits in support of his claim that he had maintained continuous residence in the United States for the duration of the requisite period, the director did not find these affidavits to be credible. She went on to specify that credible affidavits are those that include a document identifying the affiant, proof that the affiant was in the United States during the statutory period, proof that there was a relationship between the affiant such as photos and a current phone number at which the affiant may be contacted for verification. Here, the director noted that the affidavits were lacking with regard to these criteria. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. Because the applicant failed to submit additional evidence, he did not overcome the director's reasons for denial as stated in her NOID. Therefore the director determined he was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant asserts that he is now able to provide more evidence in support of his application. The applicant submits two additional affidavits.

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).

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 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, 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 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 2, 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 126 Thomas Boyland Street in Brooklyn, New York from November of 1981 until May of 2002. Part #32 of the applicant's Form I-687 states that he traveled outside of the United States only once since January 1, 1982, when he went to Trinidad for a family emergency from December 2001 until February of 2002. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant responded that during the requisite period, he was self-employed as a welder from November of 1981 until June of 2001.

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 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 two (2) affidavits.

Details of these affidavits are as follows:

- An affidavit from [REDACTED] who states that he has known the applicant since 1981 and that he has been both his friend and his neighbor since that time. Though the affiant claims to have known the applicant since 1981, he does not establish whether he met him in the United States. He also fails to indicate where he met the applicant or provide details regarding the frequency with which he saw the applicant. Although not required, the affiant also failed to provide documentation of his identity or his residence in the United States during the statutory period. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.
- An affidavit from [REDACTED] who states he has known the applicant since 1981. Though the affiant claims to have known the applicant since 1981, he does not establish whether he met him in the United States. He also fails to indicate where he met the applicant or provide details regarding the frequency with which he saw the applicant. Although not required, the affiant also failed to provide documentation of his identity or

his residence in the United States during the statutory period. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.

It is noted that in addition to these affidavits, the applicant submitted photocopies of some of the pages of his passport and a copy of his New York Identification Card. However, these documents were issued after the requisite period. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents contain information regarding the applicant subsequent to the requisite time period, they are not relevant evidence for this proceeding.

In denying the application the director noted the above, and stated that she did not find the affidavits submitted by the applicant in support of his application credible or amenable to verification as they did not include documents identifying the affiants, proof that the affiants were in the United States during the requisite period, proof that there was a relationship between the applicant and the affiant or phone numbers at which the affiants may be contacted for verification. The director went on to say that she concluded that the applicant had not submitted credible documentation that was sufficient to establish that the applicant met his burden of establishing that he maintained continuous residence in the United States for the duration of the requisite period.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

However, here, the affidavits submitted are not found to be sufficient to meet the applicant's burden of proof for the reasons stated above.

On appeal the applicant submits two additional affidavits.

Details of these affidavits are as follows:

- An affidavit from [REDACTED] who states that she has known the applicant for twenty-five (25) years. The affiant goes on to say that she has been a citizen of the United States for ten (10) years. Here, though the affiant does provide a phone number at which she can be contacted if further information is needed, the affidavit does not include documents identifying the affiant, proof that the affiant was in the United States during the requisite period, or proof that there was a relationship between the applicant and the affiant during

the requisite period. Further, the affiant fails to indicate whether she met the applicant in the United States. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.

- An affidavit from [REDACTED] The affiant states that he is currently a citizen of the United States and that he has known the applicant since 1981. Here, though the affiant does provide a phone number at which he can be contacted if further information is needed, the affidavit does not include documents identifying the affiant, proof that the affiant was in the United States during the requisite period, or proof that there was a relationship between the applicant and the affiant during the requisite period. Further, the affiant fails to indicate whether he met the applicant in the United States. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.

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 four (4) people concerning that period.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the evidence produced by the applicant is neither probative nor credible.

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). The applicant submitted four (4) affidavits as corroborating evidence of his continuous residence during the requisite period to satisfy his burden of proof. However, though the director noted that she did not find the two (2) affidavits previously submitted by the applicant with his I-687 credible for very specific reasons, the additional two (2) affidavits submitted by the applicant in support of his appeal are afforded minimal weight because they lack those same elements.

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 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.