



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-230-14468

Office: LOS ANGELES

Date: AUG 27 2008

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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. 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 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. The director noted that the applicant's immigration file contains a document signed by the applicant on November 22, 1991 indicating that the applicant was employed in Mexico from February 1975 to November 1987.

On appeal, the applicant stated that during the time the document in his file indicates that he was working in Mexico, he was living in the United States with another name. He stated that the document was sent to him when he attempted to file a labor certification application. The applicant stated that he has lived in the United States continually since 1981 and provided additional documents in support of this claim.

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).

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) 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 18, 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 listed the following address during the requisite period: [REDACTED] California from 1981 to 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following position: Self-employed laborer in California from 1981 to present.

The applicant provided multiple attestations in support of his claim of continuous residence in the United States throughout the requisite period. A declaration from [REDACTED] confirms the applicant’s wife’s residence in the United States but makes no statements regarding the applicant’s residence in the United States. The declarations from [REDACTED]

all fail to state that the applicant resided in the United States at any time other than during 1981. The declaration from [REDACTED] fails to state that the applicant resided in the United States at any time.

The declaration from [REDACTED] Jr. states that the applicant has lived in the United States since 1982 with the declarant's grandmother, [REDACTED]. The declarant stated that the applicant's wife was his babysitter from 1983 to 1990. This declaration appears to be somewhat inconsistent with the applicant's statements on his Form I-687, where he indicated that he has resided in the United States since 1981, rather than 1982. In addition, the declaration fails to provide detail regarding the region where the applicant lived and the declarant's frequency of contact with the applicant during the requisite period. As a result of these deficiencies, this declaration will be given very little weight.

The declaration from [REDACTED] states that the applicant has lived in the United States "in the year 1986, that I can recall, since I was young. But I do remember them always coming over to visit my parents." This declaration also appears to be somewhat inconsistent with the applicant's statements on his Form I-687, where he indicated that he has resided in the United States since 1981, rather than 1986. The declarant also fails to clearly state that he has personal knowledge of the applicant's continuous residence in the United States during the requisite period. The declaration fails to provide detail regarding the region where the applicant lived and the declarant's frequency of contact with the applicant during the requisite period. As a result of these deficiencies, this declaration will be given very little weight.

The declaration from [REDACTED] states that the applicant has lived in the United States since 1981. The declarant stated that the applicant lived with her, and the applicant's wife babysat the declarant and her sister for many years. This declaration fails to provide detail regarding the region where the applicant resided during the requisite period, how the declarant met the applicant, and how they came to be living together. As a result of its lack of detail, this declaration will be given only limited weight.

The declarations from [REDACTED] both state that the applicant has lived in the United States since 1981. Both declarations stated that the applicant resided with [REDACTED]. These declarations constitute some evidence in support of the applicant's claim to have resided in the United States throughout the requisite period.

The record also contains documents related to a labor certification application submitted on the applicant's behalf. These include an ETA Form 750 Application for Alien Employment Certification Part B. Statement of Qualifications of Alien (Form 750B). The Form 750B was signed by the applicant under penalty of perjury on November 22, 1991. At part #15 where applicants were asked to list all jobs held during the past three years, the applicant listed the following position: Tile setter with Plus Grupo Empresarial in Mexico from February 1975 to November 1987. This information is inconsistent with the applicant's statements on his Form I-687 and with his claim to have resided continuously in the United States throughout the

requisite period. This inconsistency casts serious doubt on the applicant's claim to meet the eligibility requirements for temporary resident status.

In denying the application, the director found 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.

On appeal, the applicant stated that during the time the document in his file indicates that he was working in Mexico, he was living in the United States with another name. He stated that the document was sent to him when he attempted to file a labor certification application. The applicant stated that he has lived in the United States continually since 1981 and provided additional documents in support of this claim. The applicant failed to provide a reasonable explanation for his signing the Form 750B under penalty of perjury, despite the fact that the information on the form directly contradicts his claim of continuous residence in the United States during the requisite period.

In summary, the applicant has submitted attestations that do not make any statements regarding the applicant's residence in the United States, fail to state that he resided in the United States at any time other than during 1981, are inconsistent with his Form I-687 application, or lack sufficient detail. The applicant submitted two affidavits in support of his claim of continuous residence in the United States that appear credible. The absence of sufficient and adequately 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 contradictions between the Form 750B and the applicant's claim of continuous residence and between the applicant's Form I-687 and the documents he submitted, and given 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 for the requisite period 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.