



U.S. Citizenship
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FILE:

MSC-06-098-24606

Office: PHOENIX

Date: AUG 29 2008

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-REPRESENTED¹

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

¹ Though the applicant's Form I-694 indicates that Dolores R. Duarte is the applicant's attorney or representative, the application does not contain a properly executed Notice of Entry of Appearance as Attorney or Representative Form (G-28) that indicates that Dolores R. Duarte is the representative of record. Accordingly, the applicant will be considered self-represented for these proceedings.

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, Phoenix. 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 also noted that the applicant stated that he was not absent from the United States during the requisite period, which caused the director to believe that he was not deterred from applying for legalization during the original filing period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that his father passed away on November 16, 1985. He submits evidence of the date of his father's death and of his attendance of his father's funeral in Mexico.

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) 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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 6, 2006. At part #20, the applicant indicates that his father's name is [REDACTED] and that he passed away in 1980. It is noted that the record indicates that this date of death was added by an interviewing officer at the time of the applicant's interview pursuant to his Form I-687 application. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant stated his address in the United States during the requisite period to be [REDACTED] in Tucson, Arizona where he resided from June 1981 until February 1988. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he went to Mexico in March of 1988 and remained there. He indicated that the purpose of this trip was “residence.” At part #33, where the applicant was asked to list all of his

employment in the United States since he first entered, he indicated that he was employed as a laborer for [REDACTED] in Borrego Springs, California from June 1981 until July 1987. It is noted that the applicant indicated he worked in Borrego Springs, California and resided in Tucson, Arizona during the same period of time and that Tucson is approximately 370 miles from Borrego Springs.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

The applicant initially failed to submit evidence that he resided in the United States during the requisite period other than his own testimony.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006. In this NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a declaration dated April 24, 2006. The applicant stated in it that he is submitting six declarations in support of his application. He further states that he attempted to file for legalization in 1987 in Calexico, California but he was turned away because either the INS or a qualified designated entity believed that he had traveled outside the United States after March of 1988 without advance parole. It is noted that it is not plausible that the applicant could have been turned away in 1987 because an individual believed he had traveled in 1988.

With this declaration, the applicant also submitted unsigned, undated declarations from [REDACTED] and [REDACTED]. Though each of these individuals submitted photocopies of identity documents

and stated that they saw the applicant at various times on unspecified dates in the United States, none of the declarations were signed. As such, these declarations have no probative value and cannot be accorded any weight as proof that the applicant resided in the United States during the requisite period.

The director of the Phoenix, Arizona District Office issued a second NOID to the applicant on December 15, 2006. In this NOID, the director stated that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on October 31, 2006, the applicant claimed that he successfully submitted his Form I-687 application but did not receive a response from the former Immigration and Naturalization Service (INS). The director also asserted that during the interview the applicant stated that he was not absent from the United States during the requisite period. The director concluded that this indicated that the applicant had not been front desked. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to this second NOID, the applicant submitted an affidavit from [REDACTED] that was notarized on January 12, 2007. The affiant states that the applicant worked in the fields beginning on February 20, 1982 when he hoed onions until May 15, 1982. He states that then from May 20 until July 20, 1982 the applicant crated onions and from August 20 until October 15, 1982 the applicant picked green chilis. He goes on to say that the applicant picked red chilis until January 1983 and that this work continued until January 10, 1986. He states that the applicant hoed cotton with the affiant in Safford from May 15, 1987 until September 10, 1987. The affiant did not indicate in which state Safford is located. The affiant failed to state whether he consulted official records to determine the applicant's dates of employment or, if not, how he determined those dates. He does not state what his title was or which company the applicant worked for. It is noted that the applicant indicated on his Form I-687 that he worked for [REDACTED] in Borrego Springs, California for the duration of the requisite period. Because this affidavit is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment affidavits must adhere to, this affidavit carries only minimal weight as evidence that the applicant resided in the United States during the requisite period.

The director denied the application for temporary residence on February 2, 2007. In denying the application, the director stated that though his office received additional evidence from the applicant, this evidence was not sufficient to overcome the reasons for denial contained in the NOID. Specifically, the director noted that though the applicant submitted a letter stating that he worked in the fields from 1982 to 1987, the letter did not establish that the applicant had traveled outside of the United States. Therefore, the director determined that the applicant was not turned away by INS when he attempted to apply for legalization during the original filing period. The director went on to say that the applicant failed to meet his burden of proving by a preponderance of the evidence that he resided in the United States for the requisite period pursuant to the requirements at 8 C.F.R. § 245a.2(d)(5).

The AAO also again notes that the director denied the application on the merits rather than denying the applicant's class membership.

On appeal, the applicant submits additional declarations in support of his application as follows:

- A declaration dated February 26, 2007 from [REDACTED] who indicates that she is the applicant's sister. The declarant states that she knows that the applicant left the United States when her father, [REDACTED], died on November 16, 1985.
- A declaration from [REDACTED] that was signed on February 28, 2007. The declarant states that the applicant was residing in the United States on November 16, 1985 when her father died and that he returned to Mexico at that time because of this death.
- The original death certificate for [REDACTED] and a translation of that document. This certificate indicates that the applicant, who is the son of the deceased, was the declarant on this certificate. The certificate indicates that the applicant's father passed away on November 16, 1985. The applicant's signature appears on this certificate. It is noted that this certificate indicates that the applicant's address at the time this death certificate was issued was [REDACTED].

The evidence submitted by the applicant is sufficient to establish that he was present in Mexico on November 16, 1985. Therefore, the AAO finds that the applicant has established that he had an absence from the United States at that time. However, the applicant has not stated or submitted other evidence that indicates how long he was absent from the United States or proof that this single absence was for less than 45 days. Further, because the applicant did not indicate that he was absent from the United States in 1985 on his Form I-687, doubt is cast on whether the applicant has fully represented all of his absences from the United States during the requisite period to CIS. This is significant in light of the fact that the applicant's father's death certificate indicates that the applicant was residing in Sonora, Mexico at the time he signed that document in 1985.

Doubt cast on any aspect of the applicant'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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO has reviewed the documents submitted by the applicant in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period, and has found this evidence insufficient for the applicant to meet his burden of proof. Though the applicant submitted six declarations in response to the NOID issued by the director of the National Benefits Center, these declarations are not signed and therefore carry no weight as probative evidence of the

applicant's residence. He has submitted an employment affidavit from an individual who states that the applicant worked in Safford in an unnamed state. However, the applicant has indicated that he worked in Borrego Springs, California for [REDACTED] during the requisite period. The applicant did not indicate that he had any absences from the United States during the requisite period on his Form I-687, yet he has submitted evidence that he was in Mexico in 1985 when his father passed away. The death certificate that the applicant submitted indicates that the applicant was residing in Sonora, Mexico in 1985 when he signed that document. These inconsistencies cast doubt on the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.