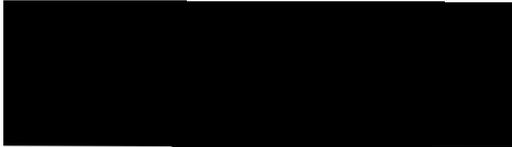


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Services

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FILE:

MSC-06-097-11164

Office: PHILADELPHIA

Date:

DEC 02 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-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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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, Philadelphia. 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, on January 5, 2006 (together, the I-687 Application). 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 as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, letter, and a statement. On appeal, the applicant addresses the director's concerns and asserts that he had a "personal and direct relationship" with [REDACTED] and that Dr. [REDACTED] was in the United States in December 1981. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits; a letter; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; a copy of the applicant's Brazilian identification card; a copy of the applicant's passport; a copy of the applicant's Pennsylvania driver's license; and a copy of the applicant's social security card. The applicant's birth certificate, passport, social security card, Brazilian identification card, and Pennsylvania driver's license are evidence

of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- Two notarized affidavits from [REDACTED] dated December 5, 2006 and December 15, 2006. The affiant states that she met the applicant at a Christmas party in December 1981 and that the applicant and his parents traveled to Florida for work. The affiant also states that the applicant and his parents "traveled back to Pennsylvania" due to their friendship with the affiant. The affiant states that the applicant's parents told her that they applied for amnesty in April 1988 and included the applicant in their application. Finally, the affiant states that the applicant would visit her "one or two times a year" for the holidays and she was very happy when he decided to move to Pennsylvania. Although the affiant states that she has known the applicant since 1976, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate when she first met the applicant's parents, or how she dates her initial meeting with the applicant. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED]. The affiant states that he knows the applicant personally and that he was the applicant's landlord for many years. However, the affiant states that he does not "have the lease as it has been a long time." The affiant certifies that the applicant and his parents lived at [REDACTED], Ft. Lauderdale, Florida on December 31, 1981. The affiant also states that after his parents left for Brazil, the applicant continued to live at the same address and paid the rent on time. The affiant states that the applicant worked in construction. Finally, the affiant states that it is his "understanding" that the applicant's parents were not able to obtain legal status and that he "understands" that the applicant "traveled frequently to the state of Pennsylvania." Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant or how frequently he had contact with the applicant. Further, the affiant includes information for which he has no personal knowledge. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit from [REDACTED], dated December 29, 2005. The affiant states that he currently lives in Philadelphia, Pennsylvania. The affiant states that he has known the applicant since 1981. The affiant states that the applicant “had been working for [him] doing repair work.” According to [REDACTED]’s affidavit as discussed above, the applicant and his parents lived in Florida on December 31, 1981. The affiant does not indicate where the applicant worked for him, when the applicant began working for him, or how long the applicant worked for him in 1981. On appeal, the applicant submitted a letter from the applicant dated January 5, 2007. The letter on appeal is inconsistent with the previously submitted form-letter affidavit. In his letter Dr. [REDACTED] claims that he treated the applicant in December 1981. [REDACTED] states that the applicant came to his office with his mother in order to be treated for a severe cold. [REDACTED] states that the doctor-patient relationship can be verified by the applicant’s medical record. However, the record of proceeding contains no copies of the applicant’s medical record. In addition, [REDACTED] states that the applicant came to Philadelphia and offered him his services as an independent contractor in 1985. In the form-letter affidavit, [REDACTED] stated that the applicant worked for him in 1981 and never mentioned their doctor-patient relationship. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this affidavit has minimal probative value in supporting the applicant’s claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States in December 1981. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on November 1, 2006. The director denied the application for temporary residence on December 27, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant addresses the director’s concerns and argues that he had a “personal and direct relationship” with [REDACTED] and that [REDACTED] was in the United States in December 1981. As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 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.