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U.S. Citizenship  
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FILE:

MSC-05-355-12745

Office: NATIONAL BENEFITS CENTER

Date: JUL 09 2008

IN RE:

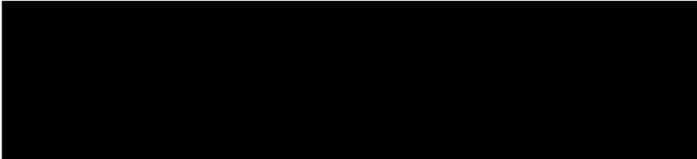
Applicant:



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:



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, National Benefits Center. 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. Specifically, the director stated that the evidence the applicant submitted in support of his Form I-687 did not establish that he entered the United States prior to January 1, 1982 nor was it proof that he had resided continuously in the United States 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.

On appeal, the applicant asserts that he is the victim of fraud. He states that after applying for Temporary Resident Status through a woman named Danuta in New York, he learned that this woman was perpetrating fraud. He submits additional evidence as proof of his residency in the United States during the requisite period.

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 or 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 or her 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 September 20, 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 showed his first address in the United States be [REDACTED] in Framingham, Massachusetts where he resided from December 1998 until the present time. It is noted that the applicant did not indicate that he resided in the United States during the requisite period on his Form I-687. At part #32 where the applicant was asked to list all of his absences from the United States since he first entered, he indicated that he had no absences from the United States during or after the requisite period. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was first employed as a self-employed handyman in Framingham, Massachusetts from November 1998 until July 1999.

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 for the requisite period when he submitted his Form I-687.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 15, 2005. 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 director's NOID, the applicant submitted an unsigned declaration that is dated December 12, 2005. In this declaration, the applicant states that he believes he is eligible for legalization. He goes on to say that he would like his case to be reconsidered and that he believes he is admissible as an immigrant.

The director denied the application for temporary residence on September 14, 2006. In denying the application, the director stated that the applicant's unsigned declaration did not allow him to meet his burden of establishing that he resided continuously in an unlawful manner in the United States for the duration of the requisite period.

On appeal, the applicant asserts that he was the victim of a fraudulent preparer named Danuta. He asserts that though she prepared his application, he did not receive a copy of his Form I-687 from this preparer. He states that he has now obtained an attorney and, though that attorney, he submits additional evidence. Details of this evidence are as follows:

- A declaration from [REDACTED] from the First Brazilian Baptist Church in Hyannis, Massachusetts. The declarant states that he has known the applicant for a long time. He asserts that the applicant has good moral character. He further states that the applicant resided at [REDACTED] in Malborough, Massachusetts from June 1981 until January 1989. It is noted that the applicant's Form I-687 does not state that the applicant resided in the United States until 1998. The declarant does not indicate when he met the applicant, where he met him or whether they met in the United States. He fails to state the frequency with which he saw the applicant during the requisite period. Though he states that the applicant resided in the United States during the requisite period, he does not state how he knows this. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] that is dated November 2, 2006. The declarant submits a photocopy of his Massachusetts Driver's License with his declaration. The declarant states that he met the applicant in June 1981 when the applicant moved into his home at [REDACTED] in Malborough, Massachusetts. The declarant states that the applicant continued to reside at this address when the declarant moved out on December 30, 1988. The declarant does not state where he first met the applicant. Though he states that the applicant resided with him, he does not state whether there were periods of time during the requisite period when he did not see the applicant. Further, the applicant did not indicate on his Form I-687 that he resided in the United States until 1998. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] that is dated November 3, 2006. The declarant submits a photocopy of his Driver's License with his declaration. The declarant states that he has known the applicant for many years. He asserts that the applicant resided at [REDACTED] in Marlborough, Massachusetts from June 1981 until January 1989. Though this declarant states that he has known the applicant for many years, he does not state when or where he first met the applicant or whether they first met in the United States. He fails to indicate the frequency with which he saw the applicant during the requisite period. He does not state whether there were periods of time during the requisite period when he did not see the applicant. Further, though this declarant states that the applicant resided in the United States during the requisite period, the applicant did not indicate that he resided in the United States until 1998 on his Form I-687. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

In summary, the applicant stated on his Form I-687 that he did not begin residing in the United States until 1998. Similarly, he has not indicated that he was employed in the United States until

1998. The applicant asserts that he was the victim of fraud and indicates that he did not receive a copy of his Form I-687 from the preparer who completed this form.

However, if the AAO considers only the evidence submitted with the applicant's appeal and disregards the discrepancies in the record regarding his residence as stated in declarations submitted with his appeal and the applicant's Form I-687, the applicant continues to fail to meet his burden of proof. Though the applicant submitted three declarations with his appeal, each of them was significantly lacking in detail and, for the reasons noted above, these affidavits do not allow this applicant to meet his burden of proving that he resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the inconsistencies regarding the applicant's residence during that time 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, sufficiently detailed supporting documentation, it is concluded that he 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.