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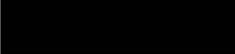


U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: NEW YORK Date:

JUL 23 2008

MSC 05 195 17941

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 "Robert P. Wiemann".

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, New York. 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 April 13, 2005. The applicant was interviewed on October 2, 2006 in connection with his Form I-687. The director issued a Notice of Intent to Deny (NOID) the application on October 2, 2006 and denied the application on November 15, 2006. On appeal, the applicant asserts he provided credible evidence and testimony of his continuous residence and physical presence in the United States during the statutory period. The applicant submits an additional affidavit.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. 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).

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).

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 establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on January 22, 2003. The applicant listed his address for the pertinent time period as: [REDACTED] Bronx, New York from December 1981 to May 1989. The applicant listed his employment for the pertinent time period as a self-employed vendor from June 1982 to January 1990. The applicant listed two absences from the United States since his initial entry: (1) to Canada in February 1987 for business; and (2) to Togo in December 2002 to January 2003 for business. The applicant's date of birth is January 1, 1964.

The record includes the applicant's September 22, 2006 sworn statement in which the applicant declared: that he first entered the United States in December 1981 through the United States-Canada border without inspection; that he resided in the United States in a continuous unlawful status from 1981 to July 1987; and that July 19, 1987 was the date he was turned away by Immigration and Naturalization Service when he tried to apply for legalization. The applicant also provided the following documentation regarding his residence during the pertinent time periods:

- A September 22, 2006 affidavit signed by [REDACTED] who declares: that he has personal knowledge that the applicant was in the United States from November 1986 to July 1987; that the applicant lived at [REDACTED] from December 1981 to May 1989; and that the applicant could not provide rent receipts because he was undocumented at the time;
- An undated sworn statement signed by [REDACTED] who declares: that she first met the applicant in 1981 at 14th Street and Fifth Avenue when she was going into a coffee shop for lunch; that every day the applicant and the declarant would talk, go to lunch, or a movie; and that she has known the applicant and his family since February 1981;

- An October 25, 2006 letter signed by Bishop [REDACTED] on the letterhead of the Kelly Temple in New York who states that the applicant visited his church in 1981 together with his family to learn English as a second language.
- A 2006 affidavit with an illegible date signed by [REDACTED] who declares: that he met the applicant "In 1981-1988," at 14th Street and Sixth Avenue; that the affiant and the applicant sold merchandise together on the corner of Sixth Avenue and 14th Street; and that he has known the applicant and his family since 1981.

The record in this matter contains only the applicant's statement and the affidavits/declarations submitted by the above four individuals. The affidavit of [REDACTED] is a form affidavit that does not include details of how the applicant and the affiant met, does not provide substantive information regarding the relationship of the affiant and applicant, and does not explain how the affiant has obtained personal knowledge of the applicant's residence. This affidavit is not probative as it does not provide corroborating detail of any interactions between the applicant and the affiant. The declaration of [REDACTED] indicates that she first met the applicant in 1981 at 14th Street and Fifth Avenue and also indicates that she has known the applicant and his family since February 1981. This information conflicts with the applicant's testimony that he entered the United States in December 1981. The [REDACTED] declaration does not provide clarifying detail regarding how the declarant could first meet the applicant at 14th Street and Fifth Avenue when the applicant had not entered the United States until December 1981. The inconsistent information in this affidavit undermines the credibility of the declarant and thus is not probative. The general nature of the affidavit of [REDACTED] is insufficient to corroborate the affiant's claim that he met the applicant in 1981 through 1988. The affiant does not provide any evidence substantiating that the applicant entered the United States prior to January 1, 1982 and resided unlawfully in the United States for the requisite time period. The affidavit is not probative as the general nature of information characterizing the affidavit lacks sufficient indicia to establish the reliability of the affiant's assertions.

The AAO has also reviewed the October 25, 2006 letter signed by Bishop [REDACTED]. This letter does not provide the information that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) specifies for letters of attestations from religious organizations with regard to proof of an applicant's residence, including: inclusive dates of the applicant's membership; the applicant's address(es) during membership; establishment of how the author knows the applicant; and establishment of the origin of the information being attested to. The letter signed by the Bishop refers to a visit by the applicant to the declarant's church to learn English. The record does not include any evidence of the applicant's first attendance and/or continued attendance at this organization. Moreover, the applicant fails to list this organization on the Form I687, part 31 which requests the names of organization, churches, etc. that the applicant claims to be a member of. The letter is not probative for these reasons.

The AAO has reviewed the entire record in this matter and does not find that the applicant has established his entry into the United States prior to January 1, 1982 and continuous residence for the applicable time period. 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. The statements and affidavits lack credibility and probative value for the reasons noted. Given the lack of

evidence and probative documentation corroborating the applicant's claim of continuous residence for the requisite period it is concluded that the applicant has failed to meet his burden of proof and 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.