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Services

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FILE:

MSC-05-264-11864

Office: NEW YORK

Date:

**JUN 30 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.

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. 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 June 21, 2005 (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, specifically noting that the applicant failed to submit additional evidence in response to the director's notice of intent to deny. 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, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a written statement, and affidavits already in the record of proceeding. On appeal, the applicant states he submitted a response to the director's notice of intent to deny "within thirty days via express mail." The applicant also states that he is "resubmitting the additional documents" on appeal. 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 record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on June 21, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry,

the applicant listed his first address in the United States as [REDACTED], Bronx, New York, from November 1981 to February 1982. At part #33, he listed his first and only employment in the United States as a self-employed vendor in New York, New York from April 2005 to May 2005. At part #32, the applicant listed one absence from the United States. The applicant states that he visited Pakistan from "N/A to August 1998." The AAO notes that during his March 15, 2006 interview, the applicant stated that he visited Pakistan on October 11, 1987 for one month.

The applicant has submitted several affidavits and letters; copies of the applicant's passports issued on August 1, 1994 and on April 27, 2005; a copy of the applicant's employment authorization card issued on August 29, 2005; and statements. The applicant's passport and employment authorization card 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. The following evidence relates both to the requisite period and to subsequent years:

- A notarized form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that he lives in New York, New York and that he first met the applicant in 1999 at a ball game. The declarant states that he and the applicant met in line "buying Yankee baseball tickets." This statement does not provide information regarding the applicant's entry into the United States or residence in the United States during the requisite period. Therefore, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that she lives in Bronx, New York and states that she met the applicant in 1981 at work. The declarant states that she met the applicant at a "Christmas party at work" and that he lives at [REDACTED]. The declarant adds that the applicant knows her husband. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a relationship with the applicant. The declarant does not indicate how frequently she had contact with the applicant. Furthermore, the declarant does not state when the applicant began living at his present address, and the declarant provides no information about any other addresses of the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Witness" from [REDACTED]. The declarant states that he lives in Bronx, New York and states that he met the applicant in 1999 in the Bronx, New York, and that he and the applicant played cards and had a few beers together "now and then." This statement does not provide information regarding the applicant's entry into the United States or residence in the United States during the

requisite period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A form-letter affidavit from [REDACTED] dated January 5, 2006. The declarant states that he lives in Ellicott City, Maryland and states that he has known the applicant since 1985. The declarant states that he used to live in Brooklyn and met the applicant in New York during a friend's dinner party. The declarant also states that he and the applicant had whisky shots together and a nice talk afterwards. The declarant adds he knows the applicant personally. Although the declarant states that he has known the applicant since 1985, the statement does not supply enough details to lend credibility to a 21-year relationship with the applicant. The declarant does not indicate how frequently he had contact with the applicant during the requisite period, and he provides no details that demonstrate the extent of his interactions with the applicant 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 in 1981 and resided in the United States for the entire requisite period.
- A statement entitled affidavit from [REDACTED] dated March 14, 2006. Although this document bears a notary's seal and stamp and what appears to be the notary's signature, it is not signed by [REDACTED]. Consequently, the document has no evidentiary value. Aside from this fatal defect, the statement does not supply enough details to lend credibility to the asserted 24-year relationship with the applicant.
- A notarized copy of a bank statement from Apple Bank dated September 30, 1983 which includes the applicant's name and an address listed in the Form I-687; a notarized copy of a New York Telephone bill dated October 1, 1983 which includes the applicant's name and an address listed in the Form I-687; and a notarized copy of a Harlem Faculty Practice statement dated March 17, 1983 which includes the applicant's name and an address listed in the Form I-687. The notary seal, stamp, and signature on each document add no evidentiary weight, as they are not accompanied by any statement of the notary as to the authenticity of the documents. Although the statements and bill may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence. At most, they are evidence of the applicant's residence on the stated dates. Because they are not originals, they are given less weight than original documentation. *See* 8 C.F.R. §§ 245a.2(d)(6).

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 November 1981 without inspection. 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof

in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on November 15, 2005 and on April 10, 2006. The director denied the application for temporary residence on June 13, 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. In addition, the director noted that the applicant failed to submit additional evidence in response to the director's April 10, 2006 NOID. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant states he submitted a response to the director's notice of intent to deny "within thirty days via express mail." However, the applicant did not include evidence of having sent the documents via express mail such as a receipt or proof of delivery. 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.