



U.S. Citizenship
and Immigration
Services

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LA

FILE: [REDACTED]
MSC-05-146-10756

Office: DENVER, COLORADO

Date: MAY 13 2008

IN RE: Applicant: [REDACTED]

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 Records 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, Denver, Colorado. 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 entered the United States before January 1, 1982, or continuously resided in the United States in an unlawful status for the duration of the requisite period. Further the director found that the applicant failed to establish that he had attempted to file a legalization application or were turned away from filing an application during the relevant time 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 submits a brief statement.

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 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)(1) 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 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 petitioner 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, 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 had entered the United States before January 1, 1982, continuously resided in the United States in an unlawful status for the duration of the requisite period, attempted to file a legalization application or whether he was turned away from filing an application during the relevant time period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 23, 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 addresses in the United States to be at [REDACTED] Brooklyn, New York from September 1981 to February 1983, at [REDACTED] Brooklyn, New York from February 1983 to June 1986, and at [REDACTED], Elmhurst, New York from June 1986 to December 1989 through the requisite period. Similarly, at part #33, he showed his employment in the United States to be for the [REDACTED] Brooklyn, New York as a kitchen helper from December 1981 to September 1983, for the Sun [REDACTED] Brooklyn, New York as a kitchen helper from September 1983 to March 1987, for the [REDACTED], Bronx, New York as a kitchen helper from December 1985 to March 1987, and for [REDACTED] Bronx, New York as a kitchen helper from March 1987 to July 1991 through the requisite period.

The applicant submitted New York State identification card issued on October 11, 2005 and the following documentation:

- A letter dated December 13, 2005, from [REDACTED], club manager of the [REDACTED] Social Club, Inc. of New York, New York, that the applicant had been a member since December 1981 and that the “longest period during his residence in the United States he has not been seen is about 15 weeks.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states:

Attestations by . . . organizations to the applicant's residence by letter [are permitted] which:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

A review of the letter dated December 13, 2005, demonstrates that it does not state the dates of the applicant’s membership, does not include the seal of the organization, and does not establish how the author knows the applicant. [REDACTED] does not indicate that he has personal knowledge of the applicant’s whereabouts during the requisite time period or the origin of the information being attested to in the letter.

- A standard form pre-printed affidavit made on January 1, 2005, by [REDACTED] of New York, New York, that he is acquainted with the applicant and knows that he has resided in the United States unlawfully from “before January 01, 1982 until 02/08/1988 when the applicant above mentioned visited a QDE to apply for the 1986 “amnesty” program” and was told by the applicant about that visit to the QDE.
- A standard form pre-printed affidavit made on February 1, 2005, by [REDACTED] of Flushing, New York, that he is acquainted with the applicant and knows that he has resided in the United States unlawfully from “before January 01, 1982 until 02/08/1988 when the applicant above mentioned visited a QDE to apply for the 1986 “amnesty” program” and was told by the applicant about that visit to the QDE.

The above affidavits does not provide detail regarding how and when the applicant and the affiants met; their frequency of contact during the requisite period; and the applicant's address(s) during the requisite period. While not required, the affiants failed to submit proof that the affiant was in the United States during the requisite period or an explanation and proof of the relationship between the affiant and the applicant. The affidavits lack sufficient detail to confirm that the applicant resided in the United States during the requisite period and they were not verifiable.

On February 8, 2006, the director requested that the applicant submit a copy of the applicant's birth certificate, proof of Colorado residency, originals of the legalization appointment request from INS, and the original of the QDE's letter rejecting the applicant's legalization application.

In response the applicant submitted:

- The applicant's birth certificate.
- A 2005 W-2 statement issued to the applicant residing at 6029 S. Crestview Way, Littleton, Colorado.
- A photocopy of a letter dated February 8, 1988 sent to the applicant at [REDACTED] Elmhurst, New York by [REDACTED] QDE director of Polonia Organizations League Inc. of New York, New York.
- A photocopy of a letter dated August 13, 1990, from U.S. Immigration and Naturalization Service (INS), New York, New York, to the applicant at [REDACTED] Jackson Heights, New York requesting an interview under the CSS/Newman Settlement Agreements.
- A hand written note that stated "I don't have the original. INS took the original when I went for an interview."

On May 24, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided 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.

The director stated that the applicant on February 8, 2006, said that he had visited a QDE in New York but was rejected because of a brief trip outside the United States. According to the director the

applicant claimed in the February 8, 2006 interview that the QDE kept his application and gave the applicant notice of his ineligibility.

According to the director, the applicant stated that on February 28, 1990 the applicant tried to apply for legalization with INS but was sent home because there was no Chinese language interpreter available and was told that the applicant would be informed of another interview, but the applicant stated that this notice was not sent.

According to the director, the applicant stated that he returned to the INS office which gave the applicant a letter dated August 13, 1990, requesting the applicant return for an interview on September 28, 1990 with INS to determine class action membership. According to the director, the applicant did not explain what happened at this second appointment.

According to the director, the applicant in a statement submitted with the application stated that the above mentioned QDE refused to accept the applicant's application and fees, and that when the applicant had reappeared at the INS in New York, that the applicant had received a hand-delivered second interview notice (on or about August 13, 1990). According to the director, had the New York office of INS sent the applicant an appointment letter for a second legalization interview, the applicant's application would have been kept and a permanent file made on the applicant's behalf.

A search of CIS records does not reveal that an application was received or a permanent file opened for the applicant. Further there is no record that the applicant's application was either approved or denied.

In response to the NOID, the applicant submitted the following evidence in support of his claim:

- A bank savings passbook from Golden Pacific National Bank, New York, New York, for the applicant's account with the bank evidencing transactions from may to October 1982.
- A receipt dated March 8, 1982, from The China Safe Deposit Co., to the applicant.
- A portion of a billing statement to the applicant dated March 19, 1982.

The applicant has not explained the import of the above items to the issues at hand. Since they are all dated after January 1, 1982, they cannot be evidence of the applicant's entry into the United States before that date, and in and of themselves are not evidence of residence in the United States prior to that date during the requisite period.

- A letter dated June 12, 2006, from [REDACTED] Abbot with the Buddhist Association of New York, New York, that stated "we know of" the applicant's since his "first entry into the United States prior to 01/01/1982, and we also know that he has resided in the United States in a continuous unlawful status, except for brief absences, from before 1982"

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) permits attestations by organizations to the applicant's residence by letter which identifies the applicant by name, is signed by an official (whose title is shown), shows inclusive dates of membership, states the address where applicant resided during membership period, includes the seal of the organization impressed on the letter or the letterhead of the organization, establishes how the author knows the applicant and establishes the origin of the information being attested to in the letter. A review of the letter dated June 12, 2006, demonstrates that it does not state the dates of the applicant's membership, does not include the seal of the organization, and does not establish how the author knows the applicant. Abbot Jue does not indicate that he has personal knowledge of the applicant's whereabouts during the requisite time period.

- A standard form affidavit from [REDACTED] of Brooklyn, New York, made June 22, 2006, detailing the day, month and year from September 1981 through October 2005 where and when the applicant resided in eight locations in New York and Colorado. According to the affiant the applicant is a very good friend and that the affiant knows the applicant's "first entry into the United States prior to 01/01/1982, and we also know that he has resided in the United States in a continuous unlawful status, except for brief absences, from before 1982"
- A standard form affidavit from [REDACTED] of New York, New York, made June 22, 2006, detailing the day, month and year from September 1981 through October 2005 where and when the applicant resided in eight locations in New York and Colorado. According to the affiant the applicant is a fellow Buddhist and that the affiant knows the applicant's "first entry into the United States prior to 01/01/1982, and we also know that he has resided in the United States in a continuous unlawful status, except for brief absences, from before 1982"
- A standard form affidavit from [REDACTED] of Brooklyn, New York, made June 22, 2006, detailing the day, month and year from September 1981 through October 2005 where and when the applicant resided in eight locations in New York and Colorado. According to the affiant the applicant was a happy customer and that the affiant knows the applicant's "first entry into the United States prior to 01/01/1982, and we also know that he has resided in the United States in a continuous unlawful status, except for brief absences, from before 1982"

The applicant submitted the three standard form affidavits from [REDACTED] and [REDACTED]. The final paragraphs of each affidavit contain exactly the same information. Each affiant knew the day, month and year (commencement and termination) of the applicant's stay in eight residences, when the applicant was continuously present in the United States and other information reasonably known only by the applicant. Each of the above affiants failed to state that he has direct, personal knowledge of the applicant's continuous residence in the United States. While not required, the affiant failed to submit proof that the affiant was in the United States during the requisite period. Each affiant does not indicate the addresses at which the affiant lived during the requisite period (and since the applicant lived in Colorado for a period and not in New York how he could confirm the applicant's Colorado residence), his frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence.

On appeal, the applicant asserts that on February 8, 1988 he attempted to file a legalization application with a qualified designated entity (QDE) but it did not accept his application. Thereafter the applicant contends that he made two appointments with Citizenship and Immigration Services (CIS)'s predecessor Immigration and Naturalization Services (INS), but on the second appointment was sent home and that he never heard from CIS again.

The applicant disputes the director's statements of the dates of his absences from the United States, the amounts¹ deposited in his banking account, and the expiration date of his New York State driver's license.

The applicant states that he has submitted the originals of the subject legalization appointment letter and the QDE rejection letter. No such originals are in the record of proceeding.

The director denied the application for temporary residence on August 28, 2006. In denying the application, the director, *inter alia*, in addition to the matters recounted above in the NOID, stated that the applicant provided sworn testimony that he entered the United States on October 3, 1981, with his uncle who drove the applicant into the United States from Canada, that from October 10, 1986 to October 20, 1986 and on February 15, 1987, to February 29, 1987 the applicant exited the United States and then re-entered the United States from Canada on a tour bus but on each trip he was never asked to show his identity papers or asked questions. According to the director, the applicant has stated he has since lost his passports.

In summary, the applicant has provided insufficient evidence that the applicant had entered the United States before January 1, 1982, continuously resided in the United States in an unlawful status for the duration of the requisite period, attempted to file a legalization application or was turned away from filing an application during the relevant time period. Moreover, the record shows that the applicant has contradicted the assertions made on appeal with statements by the applicant previously given under oath to CIS immigration officers. His contradictory testimony also raises doubts as to his current claims of residency.

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

¹ The applicant is correct. The director misstated the amount of deposits in the applicant's bank account. This and other misstatements made by the director are harmless error that do not effect the issues of this case.