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U.S. Citizenship
and Immigration
Services

LA



FILE: [REDACTED]
MSC-05-004-11133

Office: NEW YORK Date: **NOV 12 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 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, 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. 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. In her Notice of Intent to Deny (NOID), the director that the evidence submitted by the applicant was not sufficient to satisfy his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application. Though the director noted that the applicant submitted a request for additional time to submit a response to the NOID, her office did not receive any additional evidence from the applicant after he submitted this request. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that the director failed to accord him due process, as she did not respond to his request for additional time within which to submit additional evidence.

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 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 burden of establishing that he maintained 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 October 4, 2004. 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 indicated he resided at [REDACTED] in New York, New York from July 1981 to February 2003. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during 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 stated that he was employed as a vendor in New York from August 1981 until the present time.

Also in the record is a sworn statement taken from the applicant at the time of his interview with a Citizenship and Immigration Services (CIS) officer on July 5, 2005. The applicant stated that

his first address of residence in the United States was on [REDACTED] in New York. He stated that he resided at this address until August 1998. It is noted that the end date of the applicant's residence at this address is not consistent with what he indicated on his Form I-687. He further asserted that he was absent from the United States for the first time in July 1997.

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 submitted two affidavits from [REDACTED] in support of his claim that he resided in the United States for the duration of the requisite period.

In his first affidavit, [REDACTED] states that he witnessed that the applicant was absent from the United States after November 6, 1986. However, the affiant does not state when this absence occurred or whether it occurred during the requisite period. It is noted that the applicant stated both in his sworn statement and on his Form I-687 that he was not absent from the United States during the requisite period. The affiant states that because of this absence, the applicant could not apply for legalization under the CSS/LULAC Amnesty program. However, it is noted that the applicant successfully submitted his application under the CSS/Newman (LULAC) Settlement Agreements and that this is the application that is currently on appeal. Because the affiant does not state whether the applicant resided in the United States for part of all of the requisite period, this affidavit carries no weight as evidence of the applicant's residence in the United States during that period.

In his second affidavit, [REDACTED] states that he knows that the applicant was present in the United States in the United States in New York before December 31, 1981. However, the affiant does not indicate where he first met the applicant or whether he first met him in the United States. Similarly, the affiant fails to state whether he knows if the applicant resided in the United States at that time or indicate whether there were periods of time during the requisite period when the applicant did not reside in the United States. Because the affiant does not state whether the applicant resided in the United States for part of all of the requisite period, this affidavit carries no weight as evidence of the applicant's residence in the United States during that period.

In her NOID, the director stated that though the applicant submitted the previously noted evidence from [REDACTED], that evidence was not submitted with documents identifying the affiant, proof that the affiant was in the United States during the requisite period, a current phone number at which the affiant could be reached to verify his testimony, and proof that there was a relationship between the affiant and the applicant. The director therefore found that the applicant failed to satisfy his burden of proof with the evidence submitted. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In August of 2005, the applicant submitted a response to the NOID in which he stated that [REDACTED] was out of the country and therefore, he would like additional time to either submit additional evidence from the affiant or to submit evidence from other witnesses.

The record reflects that no additional correspondence was received from the applicant after he submitted this letter.

The director denied the application for temporary residence 17 months later in February of 2007. In denying the application, the director noted that she received correspondence from the applicant requesting an additional 30 days within which to submit evidence. However, because the applicant had not submitted additional evidence for consideration, the director found he did not overcome her reasons for the denial of the application as stated in the NOID.

On appeal, the applicant asserts that he never received a response from the director after he submitted his request for an extension of the 30 day deadline to submit additional evidence. He states that the denial of his application was sudden and was in violation of his due process, as he did not receive a written response regarding his request for an extension. The applicant did not submit additional evidence for consideration with his appeal.

The AAO finds that the applicant has failed to satisfy his burden of proof with the evidence submitted. Though the regulation at 8 C.F.R. § 245a.2(d)(3) provides a broad range of types of evidence that an applicant may submit in support of his application, this applicant submitted only two affidavits from one individual as evidence. Neither of these affidavits contains testimony that is sufficient to satisfy the applicant's burden of proof for the reasons noted above.

Further, though the applicant states that his due process was violated, the director waited for 17 months to receive additional evidence from the applicant. However, the applicant did not submit any such evidence. The applicant similarly failed to submit additional evidence with his appeal. The AAO finds the applicant has been given reasonable opportunities to submit evidence in support of his application.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for his own assertions and the statements and the 1 affiant noted above. The statement from Mr. [REDACTED] lacks credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during any part of the requisite period 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 lack of credible 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.