



U.S. Citizenship
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FILE:



MSC 04 280 11176

Office: NEW YORK

Date: NOV 13 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:

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 "John F. Grissom".

John F. Grissom, Acting 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 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 July 6, 2004. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On October 17, 2005, the director issued a notice of intent to deny (NOID) stating that the applicant had disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence. In response to the NOID, the applicant provided a medical certificate and record of hospitalization from his mother's attending physician. The director denied the application, finding 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 since prior to January 1, 1982. The director also determined that the applicant had disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and had not shown emergent reasons for the length of absence.

On appeal, the applicant submitted three affidavits for consideration.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (1) had continuously resided in the United States in an unlawful status since prior to January 1, 1982 and (2) had not disrupted his period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988 and if so, had shown emergent reasons for the length of absence. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in New York at the Hotel Bryant from 1981 to 1982. He indicated at part 33 of his Form I-687 application that he was self-employed as a street vendor from June 1981 to 2004. The Form I-687 application at part 32 lists eight absences from the United States for the applicant since his initial entry. During the statutory period, the applicant states that he traveled to Senegal for a family visit from April 1986 to June 1986 and again from April 1987 to May 1987.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish for due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

On October 17, 2005, the applicant was interviewed in connection with his Form I-687 application. The applicant stated during his interview that he arrived in the United States in June or July, 1981 and remained in the United States until he traveled to Senegal to visit his family from January 1986 until April 1986. In response to the NOID, the applicant explains that he went to Senegal with the intention of staying one month, however, he found his mother very ill. Upon taking her to the city of Dakar, she was admitted into a facility where she was diagnosed with cardiovascular disease. The applicant states that she remained in the facility until July 1986. The applicant has provided a medical certificate and record of hospitalization signed by his mother's attending physician. One certificate dated April 5, 1986 states that his mother was hospitalized in the neurology service at Dakar. The second certificate also dated April 5, 1986 from the same physician states that the applicant's mother was hospitalized at Pikine from April 5, 1986 to July 6, 1986. The certificates are dated the same day in two different cities by the same doctor. Dr. [REDACTED]'s letter from Pikine on April 5, 1986 refers to a date in the future when the applicant's mother was released from the hospital, on July 6, 1986, calling into question the veracity of the assertions. Further, the applicant gave conflicting dates about his 1986 absence from the United States. In his interview, he stated he was out of the United States from January to April 1986, and did not mention his mother's illness. On his Form I-687 application, he indicated that he was in Senegal from April 1986 to June 1986. On his letter in response to the NOID, he stated he returned to Senegal in January 1986 and found his mother ill. Because of the conflicting dates of his absence from the United States, and the suspect letter from Dr. [REDACTED], the AAO does not accept the applicant's testimony that he was outside the United States for more than 45 days in a single absence due to emergent reasons. The applicant had a break in continuous residence and is not eligible for status as a temporary resident. No explanation is provided for the noted inconsistencies. The inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's continuous residence in the United States during the requisite period. Therefore, the explanation and medical evidence provided by the applicant are not deemed credible and shall be afforded no weight. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO also agrees with the director that the applicant failed to establish that he resided continuously in the United States throughout the requisite period. In an attempt to establish entry into the United States before January 1, 1982 and continuous unlawful residence in the United States, the applicant submitted two affidavits relevant to the requisite period, from [REDACTED] a and [REDACTED] b. Neither affidavit contains pertinent knowledge regarding the affiants' knowledge of the applicant such as the applicant's date of entry, how they met, and the applicant's place and period of residence in the United States. The affidavits fail to explain how the affiants and the applicant developed and maintained a friendship. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's unlawful

residency in the United States since June 1981. The affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affiant's affidavits do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The inconsistencies that exist in the above noted evidence calls into question the credibility of the applicant's claim that his 1986 absence from the United States for more than 45 days was due to emergent circumstances. The affidavits while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.