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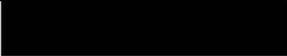
U.S. Citizenship
and Immigration
Services

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FILE:



MSC-05-356-12628

Office: NEW YORK Date:

OCT 10 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 "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 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. Specifically, the director stated that the affidavit submitted by the applicant in support of his application was not credible or amenable to verification, stating that the telephone number provided by the affiant was no longer in service. The director went on to say that the applicant's telephone number was also disconnected. The director concluded that the applicant's testimony and evidence were not credible. Therefore, the director denied the application.

On appeal, the applicant provides updated contact information for both himself and for the affiant from whom he submitted an 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 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 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 September 21, 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 indicated that during the requisite period he resided on [REDACTED] in Cincinnati, Ohio from January 1, 1981 until March 1988 and then in Baltimore, Maryland from April 1988 until December 1995. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he was absent once during the requisite period, when he traveled to Senegal to visit family from April to May in 1987. 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 at an unspecified location from January 1981 until the present.

Also in the record are notes from a Citizenship and Immigration Services (CIS) officer taken at the time of the applicant's interview regarding his Form I-687 application. The notes indicate that the applicant testified that he entered the United States in Baltimore by boat and that he

came to New York City in 1988. He further indicated that he resided at [REDACTED] in Cincinnati, Ohio from 1981 to 1988. It is noted that the applicant's testimony regarding his residence during the requisite period was not consistent with his Form I-687. On his Form I-687 he resided on [REDACTED], rather than on [REDACTED] in Cincinnati, Ohio from 1981 to 1988. He also indicated that he moved to Baltimore rather than New York in 1988. These inconsistencies cast doubt on the applicant's assertion that he resided in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his 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).

Here, the applicant initially failed to submit evidence that he resided in the United States for the requisite period.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on November 15, 2005. In the NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a declaration in which he stated that he was submitting evidence in support of his application. He also submitted a declaration from [REDACTED] who states that he currently resides in Baltimore, Maryland and that he is a retired proprietor of a seafood establishment in Baltimore. He further stated that he has known the applicant since 1981. He speaks of the applicant's moral character. However, he failed to state the circumstances under which he first met the applicant, where he met the applicant, or the frequency with which he saw the applicant during the requisite period. This is significant, because, while the declarant indicates he resides in Baltimore, Maryland the applicant indicated on his Form I-687 that he resided in Cincinnati, Ohio from 1981 until March of 1988 and only moved to Baltimore in April of 1988. Because of its significant lack of detail, this affidavit can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.

The director denied the application for temporary residence on February 27, 2007. In denying the application, the director stated that she did not find the declaration submitted by the applicant to be credible or amenable to verification. In saying this, she noted that she was not able to reach either the declarant or the applicant at the telephone numbers provided by the applicant. Therefore, the director determined the applicant failed to satisfy his burden of proof.

On appeal, the applicant provides updated telephone numbers for himself and for declarant [REDACTED]. However, though the applicant has provided updated contact information, this does not change the fact that the declaration from [REDACTED] is significantly lacking in detail.

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 inconsistent assertions and the statements and the one (1) declaration noted above. The applicant's statement and the letter he submitted in support of his application lack 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 for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, 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 inconsistencies in the record and 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.