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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



MSC-05-280-10705

Office: DENVER

Date:

SEP 23 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.

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. 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 denied the application after determining 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. The director noted the inconsistencies in the applicant's statements pertaining to his presence in, and absences from the United States. The director also noted that an aerogramme the applicant allegedly sent from the United States to India with a 1982 postmark date actually contains a United States Postal Service (USPS) copyright date of 1988. The director further noted that the applicant had failed to submit any documentation to demonstrate his presence in the United States since before January 1, 1982, and throughout the requisite period. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the applicant was sixteen years old when he came to the United States and that over the years he has lost contact with persons who knew him during the requisite period, that he was not currently in the United States, and that the applicant has been unable to retain records from that period. Counsel further asserts that the applicant's former attorney incorrectly filled out his Form G-325 and that with his limited knowledge of English, the applicant signed the application without having counsel read it back to him first. He also asserts that nowhere on the postmarked envelope does it show that the USPS printed it in 1988. Counsel submits no evidence on appeal.

Although the district director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982.

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. *See* 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 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 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 Supplement to Citizenship and Immigration Services (CIS) on July 7, 2005.

In response to the director's Notice of Intent to Deny (NOID), the applicant's attorney submitted a copy of a USPS aerogramme addressed to an individual in Haryana, India with a postmark date which appears to be November 2, 1982. The applicant's attorney stated in response to the NOID that the applicant was in India and was unable to access any documents that would further assist him in demonstrating his stay in the United States since 1981.

In denying the application, the director determined that the applicant had failed to prove his eligibility for temporary residence. The director noted the inconsistencies in the applicant's statements concerning his presence in the United States. The director explained that the applicant claimed on his current I-687 application that he resided in the United States in North Hollywood, California from April of 1981 to December of 1989, and that he returned to India on vacation from August 7, 1987 to September 11, 1987. However, the applicant indicated on his Form G-325A, Biographic Information Application that was submitted in conjunction with the Form I-130, Petition for Alien Relative on December 6, 1996, that he resided in India from the time of his birth until December of 1988. The director further noted that although the applicant submitted a copy of an aerogramme addressed to India, where the postmark date appears to be November 2, 1982, the envelope bears a USPS copyright date of 1988, suggesting that it was printed in or after that year.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. Counsel asserts that the applicant has been unable to retain records from 26 years ago, that the applicant's Form G-325 was incorrectly filled out by his former attorney, and that the envelope does not show that it was printed in 1988. No evidence is submitted on appeal. There is nothing in the record of proceeding to substantiate counsel's claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial. The AAO notes that contrary to counsel's claim, the photocopied aerogramme does appear to contain a copyright date that is later than the postmark date, as the director observed. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the document or the inconsistencies in the dates. Moreover, the applicant

submitted a letter along with the envelope that was not translated. 8 C.F.R. § 103.2(b)(3) The regulations requires that any document containing foreign language submitted to CIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the applicant's claim. Accordingly, the evidence is not probative and will not be accorded any evidentiary weight in this proceeding. Finally, it is noted that the applicant has also failed to provide any explanation with respect to the inconsistencies in his statements in his Form G-325 and I-687 application regarding his place of residence prior to 1988.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon evidence that appears to have been altered, and given the inconsistencies found in his statements, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.