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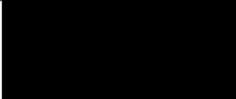
U.S. Citizenship
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Services

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FILE:



Office: HOUSTON

DATE: SEP 25 2008

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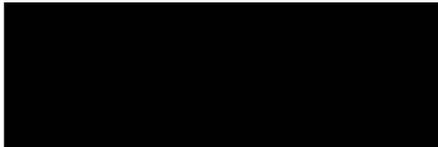
Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Houston, denied the application for temporary resident status made 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). 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 (the 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 during the requisite period. On appeal, the applicant reiterated his claim of continuous residence during the requisite period.

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 Immigration and Nationality Act (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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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.

On the Form I-687 application, which the applicant signed on December 5, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. As part of that residential history, the applicant stated that, from January 1980 to 1989, he lived at [REDACTED] in Houston, Texas.

The applicant was also required to provide an exhaustive list of all of his employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that he worked from 1980 to 1989 as a painter for [REDACTED] of an unknown address in Houston, Texas.

The applicant was required, on that application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant stated that his only absences from the United States since his initial entry were during February 1984 to be in Mexico when his child was born,¹ during June 1987 to visit his family, and from June to July of 1990 to visit his family.

The pertinent evidence in the record is described below

- The record contains an affidavit, dated December 9, 2005, from [REDACTED] in Houston, Texas, who stated that the applicant is her nephew whom she has known all of his life. The affiant further stated that the applicant entered the United States during 1980 and lived with her from 1980 to 1989.

¹ Some of the affidavits the applicant provided state that the applicant’s wife was then living in the United States, and that both went to Mexico, where she gave birth.

- The record contains an affidavit, dated December 9, 2005, from [REDACTED] of Channel View, Texas. [REDACTED] stated that he knew the applicant in Mexico, and they met again in the United States during 1980. He further stated that he saw the applicant every weekend until 1990.
- The record contains an affidavit, dated December 9, 2005, from [REDACTED] of Houston, Texas. The affiant stated that he met the applicant during 1980. He further stated that he recommended the applicant as a worker to [REDACTED] during February of 1980 and began to see the applicant daily when [REDACTED] hired him.
- The record contains an affidavit, dated December 3, 2007, from [REDACTED] in Houston, Texas. [REDACTED] stated that she met the applicant in 1982 “at the Woolworth address” though the applicant’s aunt, [REDACTED]. She stated that she knew that the applicant took brief trips to Mexico during February 1984, June 1987, and June 1990. The affiant further stated that she then managed an apartment complex, and hired the applicant to do minor painting jobs and that she has spoken to the applicant by telephone every month since 1982.
- The record contains an affidavit, dated March 19, 2007, from [REDACTED] [REDACTED] Texas, who stated that she has known the applicant, a friend of her husband, since 1980. She further stated that her husband is [REDACTED] brother, and that the applicant lived with [REDACTED] at [REDACTED]. Finally, she stated, “We normally saw [REDACTED] at almost every family gathering and I have known of his short trips to Mexico.”
- The record contains an affidavit, dated December 3, 2007, from [REDACTED] of Houston, Texas. The affiant stated that he met the applicant at a 1980 Christmas party and that the affiant also lived at [REDACTED] Houston. As the applicant claims to have lived at that address since his entry in 1980, which [REDACTED] implied was either in January or February, the chronology of the affiant and applicant meeting, and the affiant moving to [REDACTED] in Houston, is unclear. The affiant further stated that he spoke to the applicant by telephone every week, presumably at some time when they did not share the same address. Finally, the applicant stated that he normally saw the applicant May 5 of every year and or at their children’s birthday parties.
- The record contains an affidavit, dated November 29, 2007, from [REDACTED] of Hockley, Texas. The affiant stated that he met the applicant when they both worked for [REDACTED], that they practiced soccer together, and that they spoke on the telephone once or twice per week. The affiant stated that he is therefore able to state from his personal knowledge that the applicant has continuously lived and worked in the United States.
- The record contains an affidavit, dated December 3, 2007, from [REDACTED] [REDACTED] in Houston, Texas. The affiant stated that she and her husband have

been the applicant's friends since 1980, when she and [REDACTED] both lived on Woolworth. The affiant stated that she has known the applicant to reside continuously in the United States since then.

- The record contains an affidavit, dated November 28, 2007, from [REDACTED] who stated that he has known the applicant since they were children. The affiant further stated that he has known of the applicant's presence in the United States since 1980, when they both worked with [REDACTED]. He further states that he and the applicant communicated two or three times per week apart from work, and visited each other on occasion.
- The record shows that the applicant was arrested, on August 19, 1999, in Houston, Texas, for knowingly allowing a vehicle to display a false inspection certificate. On August 26, 1999 the applicant was convicted of that offense, which is a class B misdemeanor. The applicant was sentenced to 1 day of confinement and fined \$200. (Case number [REDACTED])

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the application, the applicant provided the affidavits of [REDACTED] and [REDACTED]

In a Notice of Intent to Deny (NOID), dated November 6, 2007, the director noted that CIS attempted to contact [REDACTED], but the person who answered at the number provided stated that no one of that name lived there. CIS contacted [REDACTED] who was unable to recall when the applicant came to the United States or whether or not the applicant had departed. CIS was unable to contact [REDACTED] at the number provided.

The director further noted that although the applicant stated that he lived on Woolworth for nine or ten years, he was unable to remember the street address. Further, although the applicant claimed to have worked for [REDACTED] from 1980 to 1990 he was unable to state the name of the street where the business was located or to state the name of the business.

The director stated that because the information in the applicant's affidavits was unverifiable, it was insufficient to support the application. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the affidavits of [REDACTED] all of which are described above.

The applicant also submitted a notarized statement in which he provided a different telephone number of his aunt, [REDACTED]. The applicant stated that he and [REDACTED] had some difficulty remembering when they encountered each other in the United States, which he implied

explained [REDACTED] inability to confirm the contents of the affidavit he executed. The applicant further stated that he was unable to locate [REDACTED] his alleged employer during the period of requisite residence.

In the Notice of Decision, dated May 12, 2008, the director stated that CIS attempted to contact the applicant's aunt, [REDACTED] at the new telephone number provided. When the CIS officer identified herself to the person who answered the telephone, that person abruptly hung up the telephone.

The director stated that the applicant's explanation of [REDACTED] inability to confirm the information in his affidavit did not render [REDACTED] affidavit any more credible.

The director further stated that, in an interview, [REDACTED] stated that she is unable to remember the year during which the applicant came to the United States, and stated that the applicant had not left the United States since his initial entry. This contradicts her statement on her affidavit that she knew the applicant traveled to Mexico during February 1984, June 1987, and June 1990.

The director further stated that, in an interview, [REDACTED] stated that she met the applicant ten or fifteen years ago, which would have been between 1993 and 1998, and that she has never known the applicant to leave the United States since his initial entry. This information contradicts her statements on her affidavit, that she met the applicant during 1980 and that she knew about his trips to Mexico.

The director stated that CIS had been unable to contact [REDACTED]

The director noted that the applicant relied solely on affidavits to support his application and that some of his affidavits were unverifiable and others were directly contradicted by statements the affiants made in interviews. The director found, therefore, that the applicant had failed to demonstrate that he continuously resided in the United States during the requisite period, and denied the application.

In support of his appeal the applicant executed another affidavit, but provided no other additional evidence. In his affidavit the applicant reiterated his claim of continuous residence during the requisite period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. The applicant's evidence has proven to be entirely unverifiable.

Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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