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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L1

FILE:

MSC-04-293-10682

Office: NEW YORK

Date:

APR 01 2009

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.

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, and is now before the Administrative Appeals Office 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 in the Notice of Intent to Deny (NOID) that that the affidavits submitted on behalf of the applicant appeared not to be credible or amenable to verification. The director further noted that the applicant submitted affidavits from [REDACTED] and [REDACTED] that failed to meet the criteria of credible affidavits. The director noted in the decision that the applicant failed to provide new evidence in response to the NOID sufficient to corroborate his claimed eligibility for temporary resident status. The director also noted that the applicant's statement was submitted in an attempt to amend and recant some of his earlier testimony. The director further noted that based upon evidence submitted by the applicant in the form of his own affidavit as well as his Form I-687 application where he stated that he traveled outside the United States with a visa from April 1982 to May 1982, and that the applicant's failure to address this absence cast doubt on the veracity of his claimed eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, 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's testimony and statements are consistent and were not made in an attempt to alter the circumstances as they have been presented. Counsel asserts that the applicant did not state that he was absent from the United States from April 1982 to May 1982 because he was not. Counsel further asserts that the affidavits submitted on behalf of the applicant are credible. The applicant submits copies of affidavits already provided, as evidence on appeal.

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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

Contrary to counsel's claim, on his Form I-687 application that he signed under penalty of perjury, at part #32, where he was asked to list his absences from the United States, he stated

that he was absent from the United States from April 1982 to May 1982 when he went to visit his mother. On his signed declaration in connection with his legalization application that he signed under penalty of perjury on March 30, 2006, the applicant stated that he continuously lived in the United States since 1981 except for a brief visit to Poland for an emergency, and that his application was not accepted because of his absence from the United States from April 1982 to May 1982. It is also noted that although the applicant claims to have been represented by a person who mishandled his application, the applicant signed under penalty of perjury his Form I-687 application on July 19, 2004.

The applicant submitted the following attestations:

- **Affidavits from** [REDACTED] dated February 2, 2006 and an affidavit dated March 22, 2006 from [REDACTED], and [REDACTED] as co-signer, in which she stated that she and her husband have known the applicant since the summer of 1981 when they housed him for a few days at their home at [REDACTED] in Buffalo, New York. She further stated that the applicant then left, and that upon information and belief, she came to understand that he permanently settled in New York. The affiant stated that she and her husband have kept in contact with the applicant and that the applicant has since been a guest at their home. She also stated that they have been guests of the applicant and that they met the applicant in 1987 when they traveled to New York for the US Open Tennis Tournament. The affiant fails to specify the applicant's place of residence during the requisite period.
- An affidavit dated February 22, 2006 from [REDACTED] in which she stated that she is a licensed doctor of dentistry and that she first met the applicant in 1982 when he became her patient. She also stated that the applicant has remained her patient to the present and that he would visit her office every year during that period of time for various dental appointments. The affiant has failed to reference or provide medical records, appointment records or client payment records to corroborate her statement. It is also noted that the affiant fails to specify when in 1982 she first met the applicant or the applicant's place of residence in the United States during the requisite period. The affiant has failed to demonstrate knowledge of the applicant's entry into the United States before January 1, 1982.
- **Affidavits from** [REDACTED] dated February 22, 2006 and March 22, 2006 in which she stated that the applicant lived with her and her family at [REDACTED] in Bronx, New York from the time of his arrival in New York on August or September of 1981 until 1982. She further stated that her family moved to [REDACTED] in Bronxville, New York and that the applicant stayed with them there for about four months, after which time he moved to [REDACTED] in Yonkers, New York to live with co-workers. This statement is inconsistent with the applicant's Form I-687 application at part #30 where he stated under penalty of perjury that he resided at [REDACTED] in Brooklyn, New York from March 1981 to January 1987. It is also noted that the affiant has failed to submit documentation to corroborate her statement.

- An affidavit from [REDACTED] in which he stated that from 1967 to 2001 he worked as a pastor and vicar at the [REDACTED] in Yonkers, New York. He also stated that the applicant was an active parishioner of the church from 1981 to 2001. This statement is inconsistent with the applicant's Form I-687 application at part #31 where he stated that he was a member of [REDACTED] on [REDACTED] in Brooklyn, New York from 1981 to July 2004. In addition, the affidavit does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affiant has failed to state the address where the applicant resided during the requisite period or the origin of the information being attested to. The affiant has failed to provide documentary evidence of the applicant's membership at the church during the requisite period.

The numerous inconsistencies and contradictions contained in the attestations cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 during the requisite period. He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 multiple inconsistencies and contradictions found in the record, 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.