



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 06 048 10616

Office: LOS ANGELES

Date: DEC 08 2009

IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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, Los Angeles, California, and 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. 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, the applicant asserts that he has submitted sufficient documentation establishing continuous residence in the United States during the requisite period. The applicant provides an additional affidavit from [REDACTED] in support of his 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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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 including affidavits 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.* 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- Affidavits from [REDACTED] and [REDACTED] who indicated that they are friends of the applicant’s family, and attested to the applicant’s residences in Glendale, California from March 1980 to July 1987 and in West Covina, California from August 1987 to August 1988.
- An affidavit from [REDACTED] who attested to the applicant’s residence in the Los Angeles area since March 1980. The affiant indicated that he has remained friends with the applicant since that time.
- An affidavit from [REDACTED] who indicated that he met the applicant through the Elimm church in March 1980 and attested to the applicant’s residences in Glendale, California from March 1980 to July 1987 and in West Covina, California from August 1987 to August 1988.
- A letter dated September 15, 2006, from a dentist, _____ who indicated that the applicant has been his patient since April 1980. The affiant indicated that the applicant’s “financial record and attendance record with us has been that of a very responsible person.”

The director, in denying the application, noted that the applicant submitted no evidence to support [REDACTED] statement, and in telephone verifications with [REDACTED] and [REDACTED] [REDACTED] indicated he met the applicant in 1996, and [REDACTED] answers contradicted his affidavit.¹ The director further noted that it was unlikely that [REDACTED] who was seventeen at the time, would keep in touch with a six year old. The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and denied the application on April 6, 2007.

On appeal, the applicant asserts although [REDACTED] affidavit is not detailed, it clearly specifies the date when he first became his patient. The applicant asserts that he was informed by [REDACTED] that he destroys his records about every ten years. The applicant submits an additional letter from [REDACTED]. [REDACTED], who reiterates that the applicant has been his patient since April 1980, and the applicant's financial and attendance records have been that of a very responsible person. [REDACTED] indicates that the applicant and his parents visited his old dental clinic in Garden Grove, and when he moved to Comfort Dental "I take with me most of my patients."

The affiant, however, makes no reference to having destroyed his records every ten years, and does not address the issue regarding the lack of supporting evidence to corroborate his statement. As such, the letter from [REDACTED] has little probative value or evidentiary weight.

In regards to the [REDACTED] the applicant asserts, "it is likely that a seventeen year old and a six years would keep in touch especially in a church environment that we grew up together." The applicant asserts, in pertinent part:

When Immigration called him for verification on the witness affidavit, he told me that he was about to give services whole at the same time other members of the church were asking questions at the same time. He got distracted and might have said misleading information, but the information given in the signed under oath witness affidavit is the valid information.

The applicant's assertion has no merit as he did not claim on his Form I-687 application to have been associated or affiliated with any religious organization during the requisite period. As conflicting statements have been provided, it is reasonable to expect an explanation from the affiant in order to resolve the contradictions. However, no statement from [REDACTED] has been submitted to corroborate the applicant's statement. As such, the affiant's affidavit has little probative value or evidentiary weight

In regards to [REDACTED], the applicant asserts that the affidavit "does not seem to contradict that he knows me though all my life (since I came to the United States). He knows me through his

¹ According to the interviewing officer's notes, [REDACTED] indicated that he first met the applicant in 1982 or 1983 when the applicant was residing in Costa Mesa, California.

parents and my parents. Our families were close to each other.” The applicant, however, has not provided a statement from [REDACTED] in order to resolve his contradicting statement. As such, the affiant’s affidavit has little probative value or evidentiary weight

The applicant questions why the affidavits from [REDACTED] and [REDACTED] are not being considered. Notwithstanding the minimal probative value of the applicant’s evidence of residence, it is noted that the record reflects that on April 6, 2007, the interviewing officer attempted to contact [REDACTED] at the telephone number provided, however, no one answered.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

As the applicant was a minor, it is conceivable that he would have been residing with an adult during the period in question. The applicant’s failure to provide the name of the individual he resided with during the requisite period and an attestation from said individual raises serious questions about the credibility of his claim and the authenticity of the affidavits submitted.

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 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 applicant’s reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant 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.