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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

LI



FILE:



MSC 05 231 12192

Office: NATIONAL BENEFITS CENTER

Date: FEB 04 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, National Benefits Center. 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. 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. The director specifically noted various discrepancies in the record concerning the applicant's place of residence in the United States during the requisite period. The director also noted that the affidavits submitted by the applicant in support of his claim lack sufficient detail to establish the applicant's residence for the duration of the requisite period. The application was accordingly denied.

On appeal, the applicant states that the director erred in denying his application, and that evidence of record establishes his continuous unlawful residence in the United States for the duration of 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 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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant’s claim:

- [REDACTED] submitted a sworn statement on behalf of the applicant wherein he stated that the applicant worked for him from January 4, 1985 until October 12, 1987 doing yard work. The witness provided no other information or documentation concerning the applicant’s whereabouts or activities during the requisite period.
- [REDACTED] submitted two sworn statements on behalf of the applicant. In a statement dated September 18, 1990, [REDACTED] stated that the applicant resided at [REDACTED] Delano, CA (the same address as the witness) from November 10, 1987 until the date of the statement, and that the witness was the applicant’s employer. The witness provided no additional information or documentation in that statement about the applicant’s activities or whereabouts during the requisite period. In a separate statement dated September 18, 1990, the witness stated that he was a farm labor contractor and that the applicant resided at [REDACTED]

from November 10, 1987 until the date of the application, and that the applicant resided at [REDACTED] Delano, CA from January of 1981 until December of 1984. The witness further stated that the applicant worked for him during those dates, but provided no additional information or documentation concerning the applicant's whereabouts or activities during the requisite period.

- [REDACTED] provided a sworn statement on behalf of the applicant wherein she stated that the applicant resided at her residence at [REDACTED] Delano, CA from January of 1981 until October 13, 1987. The witness stated that she and the applicant were friends, but provided no additional information or documentation concerning the applicant's whereabouts or activities during the requisite period.
- [REDACTED] provided a sworn statement on behalf of the applicant wherein he stated that he is the applicant's friend and that the applicant resided at [REDACTED] et, Delano, CA from November 10, 1987 until the date of the statement (October 3, 1990). The witness provided no additional information or documentation concerning the applicant's whereabouts or activities during the requisite period.
- [REDACTED] provided a sworn statement on behalf of the applicant wherein he stated that the applicant is his friend, and that the applicant resided at [REDACTED], Delano, CA from January of 1981 until October 13, 1987. The applicant provided no additional information or documentation concerning the applicant's whereabouts or activities during the requisite period.
- [REDACTED] provided a notarized statement on behalf of the applicant wherein he stated that the applicant worked for him from January 4, 1985 until October 12, 1987 doing yard work. The applicant provided no additional information or documentation concerning the applicant's whereabouts or activities during the requisite period.

**Applicant's Statement:**

The applicant provided a statement that was neither sworn to nor notarized in response to the director's NOID. In that statement, the applicant stated that he entered the United States in January of 1981 without inspection, and that he has continuously resided in the United States throughout the requisite period except for a brief departure to Canada in 1987.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January of 1982 and lived in an unlawful status during the requisite period consists of the applicant's personal statement and several witness statements. The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted.

Finally, the applicant's statement alone is not sufficient to sustain the burden of proof in these proceedings. 8 C.F.R. § 245a.2(d)(6). 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.