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FILE:

MSC-05-364-10701

Office: NATIONAL BENEFITS CENTER

Date:

JAN 06 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 denied the application, finding 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.

On appeal, the applicant submits a brief through counsel and he submits additional evidence for consideration.

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 has established that he (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 applicant initially failed to submit documentation in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period. On appeal, the evidence the applicant submits in support of his application includes: declarations written by friends and family; a letter from an elementary school; a baptismal certificate and a revised Form I-687. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains two Forms I-687. The applicant first filed a Form I-687 application pursuant to the CSS/Newman Settlement Agreements in September 2005. This shall be referred to as the 2005 Form I-687. The 2005 Form I-687 indicates that the applicant’s first address in the United States was [REDACTED] in Bridgeport, Connecticut where he resided from July 2002 until January 2003. Similarly, the applicant indicated that his only affiliation with any churches or organizations began in January 2003, when he became affiliated with the [REDACTED] in Framingham, Massachusetts.

The applicant submitted a second Form I-687 with his appeal. This Form I-687 was signed by the applicant on January 10, 2006. This shall be referred to as the 2006 Form I-687. The 2006 Form I-687 states that the applicant resided on [REDACTED] in Brockton, Massachusetts from 1981 until 1983; on [REDACTED] in Marlborough from 1983 to 1984; on [REDACTED] in Milford

from 1985 to 1987 and then on [REDACTED] in Brockton, Massachusetts from 1987 to 1988. Similarly to the applicant's previously submitted Form I-687, this Form I-687 does not indicate that the applicant had any affiliations or associations with churches during the requisite period or that he was ever absent from the United States.

The applicant initially failed to submit any evidence in support of his claim that he maintained continuous unlawful residence in this country during the requisite period.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) the application on November 15, 2005. In his NOID, the director stated that the applicant failed to provide evidence that he: entered the United States before January 1, 1982 and then resided in a continuous unlawful status, except for brief absences, from before 1982 until the date that he or his parent or spouse was turned away by the Immigration and Naturalization Service (INS) during the original filing period; was continuously physically present from the United States except for brief, casual and innocent departures from November 6, 1986 until the end of the requisite period; or that he was admissible as an immigrant.

In response to the NOID, the applicant submitted an unsigned letter, in which he stated that his parent was discouraged from filing for legalization in May 1987 and he is applying for legalization under the CSS/Newman agreements on that basis. The letter goes on to say that the applicant is admissible to the United States.

The director denied the application on September 14, 2006, stating that though the applicant provided a letter in response to his NOID, this letter was not sufficient to allow him to meet his burden of proof.

On appeal, the applicant submits the previously noted 2006 Form I-687 and a brief through his attorney. The applicant also submits affidavits and declarations in support of his application. Details of evidence submitted with his appeal that is relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period are as follows:

1. A brief in support of the applicant's appeal submitted by the applicant's counsel, who asserts that USCIS is requiring documentary evidence above the requirements set forth in the Settlement Agreements. It is noted that the regulation at 8 C.F.R. § 245a.2(d)(6) requires that applicant's provide evidence that they are eligible to adjust to Temporary Resident Status with evidence other than their own testimony. In this case, the applicant failed to provide such evidence other than his own testimony prior to the director's denial of his application.
2. A signed statement from the applicant, who asserts that he first entered the United States in May 1981 with his mother when he was four years old. He states that he entered without inspection in a car and first resided in Brockton, Massachusetts until October 1983. He

states that his mother first worked for [REDACTED], who the applicant's mother met in Brazil, and that she then worked for [REDACTED]. He goes on to say that his mother moved with him to Marlborough to be closer to her employer, then moved to Milford and then back to Marlborough in 1987. He states that in 1989, when he was 11 years old, he and his mother moved back to Brazil. He states that he applied for Temporary Resident Status through a woman named [REDACTED] in New York but that she did not give him a copy of his application at that time. He does not know if what she submitted was accurate but he has since become aware that [REDACTED] was submitting fraudulent claims and has disappeared. The applicant states that he now has an attorney and he would like to provide USCIS with both a new Form I-687 and additional evidence in support of his application.

3. The previously noted 2006 Form I-687.
4. A photocopy of a Baptism Certificate that indicates that the applicant was baptized on July 5, 1981 at the First United Methodist Church in Marlborough, Massachusetts. The certificate bears a notation stating that the document is a duplicate of the original baptismal certificate. However, it is not stated whether the individual who completed the current certificate consulted church records to determine the date that corresponds with the applicant's baptism or to determine where this baptism occurred. Because the applicant did not show that he was affiliated with any churches during with the requisite period on either of his Forms I-687, doubt is cast on the authenticity of the information in this certificate.
5. An undated declaration from [REDACTED], who states that he first met the applicant at a restaurant in Milford 1984 because he was dating the applicant's mother. He states that he met the applicant's mother through a woman named [REDACTED]. He goes on to say that he took the applicant to shows and games and played games with him from 1984 through 1989 when the applicant returned to Brazil. However, the declarant fails to indicate the frequency with which he saw the applicant during the requisite period. He further failed to indicate whether there were periods of time during that period when he did not see the applicant.
6. An undated declaration from [REDACTED], who states that he was a child when he met the applicant and therefore he does not remember the date or the place where he first met him. However, he states that as a child he remembers playing with the applicant at his aunt's house on many occasions. He states that his own mother brought the applicant with them when they went to movies, to the playground and to McDonalds. He asserts that the applicant's mother worked at his aunt, [REDACTED]'s, house in Worcester.
7. An undated declaration from [REDACTED] who states that the applicant's mother, [REDACTED] worked cleaning her home through another individual. She states she first met the applicant when his mother brought him to her house when she was working. She asserts that the applicant's mother often brought the applicant when she cleaned the declarant's home. She states that the applicant was three years old in July or August 1981 when she first met the applicant. She goes on to say that around 1983 the declarant hired the applicant's mother

directly to clean her house and that occasionally the applicant's mother also worked at functions at her home. She states that the applicant and his mother spent holidays with her at her home. She states that when the applicant entered school in 1987 the applicant only came with his mother on school vacations and on weekends when she worked.

8. An undated declaration from [REDACTED] who states she knows the applicant because she worked cleaning houses for [REDACTED] with the applicant's mother. She states that the applicant and his mother lived in her home for two and a half years, from May 1981 until October 1983. She states that she spent all holidays and birthdays with the applicant. She also states that after the applicant and his mother moved out of her home he continued to attend birthday parties and cook-outs at that home. It is noted that she states in her declaration that her address from May 1981 until 1983 was at [REDACTED] in Brockton, Massachusetts. The applicant indicated on his Form I-687 that he resided at [REDACTED] in Brockton, Massachusetts at that time.
9. An undated declaration from [REDACTED], who states that she first met the applicant in June 1981 because he lived in her mother's house. She states that she saw him at family functions. However, she fails to indicate the frequency with which she saw the applicant at these functions or to state whether there were periods of time during the requisite period when she did not see the applicant.
10. An undated declaration from [REDACTED], who states that she first met the applicant in May 1981 because he was her neighbor. She states that the applicant resided next door to her in her friend [REDACTED] house. She states that he resided there until 1983 and that the applicant's address of residence at that time was [REDACTED] in Brockton, Massachusetts. She goes on to say that the applicant was at cookouts at her friend [REDACTED] house and she saw him there. She also states that she saw the applicant at birthday parties at that home. It is noted that the applicant indicated on his Form I-687 that he resided at [REDACTED] rather than at [REDACTED].
11. A letter from [REDACTED] school that is dated August 10, 2006 and signed by [REDACTED]. This letter states that all school records from the 1980's have been destroyed. Therefore, [REDACTED] states that the applicant's school records are not available.

The AAO has reviewed the evidence previously submitted by this applicant that the director considered prior to issuing her decision and the AAO finds that the previous evidence submitted by the applicant, which included a Form I-687 that did not indicate that he resided in the United States during the requisite period and an unsigned statement from the applicant were not sufficient to meet the applicant's burden of proof.

On appeal, the applicant has submitted new evidence, as noted above, arguing that he was the victim of fraud when he hired a woman named [REDACTED] to complete his previously submitted Form I-687.

However, the AAO has reviewed the evidence submitted both prior to and with his appeal and finds that the applicant he has failed to meet his burden of proof. Though he has submitted a baptismal certificate that states that the applicant was baptized during the requisite period, he did not state that he was associated or affiliated with any churches on during the requisite period on either of his Forms I-687. He has submitted declarations from individuals who state that he resided at [REDACTED] from 1981 to 1983 when he stated on his Form I-687 that he resided at [REDACTED] at that time, casting doubt on his claims of residence in the United States during those years. Further, though the applicant was a minor for the duration of the requisite period, he has not submitted any evidence from his mother or from any other guardian who was responsible for his well-being and could attest to the events and circumstances of his residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.