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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

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6-1

FILE:



Office: DALLAS

Date:

JUN 04 2009

MSC 05 231 13343

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:

SELF-REPRESENTED

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, Dallas. 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant submits additional notarized statements 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 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) 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).

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 the evidence

for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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.

The pertinent evidence in the record is described below.

1. The applicant’s Personal Immunization Record from the Tarrant County Public Health Department bearing an indiscernible signature showing preventative treatments beginning on November 16, 1981.
2. A notarized statement from the applicant’s mother who states that she, her husband and the applicant came to the United States in August 1981.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since September 1981.
4. A “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants,” from [REDACTED] who states he has known the applicant has resided in the United States since August 1981.
5. A notarized statement from [REDACTED] who states he was living in Texas when he met [REDACTED] and his father when the applicant was 5 years of age (1982 or 1983).
6. Notarized statements from [REDACTED] and [REDACTED] who state they have known [REDACTED], the son of [REDACTED] and [REDACTED]. They further state “I have known [REDACTED] since 1982; he is of good character and moral.”
7. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1987, because “During my first visit in 1987, I met [REDACTED] age 5 through his father, [REDACTED]”.
8. A bedroom lease contract for [REDACTED] and [REDACTED] the applicant’s mother and father dated May 27, 1986, specifying a residential address in Dallas, Texas.
9. An IRS Form 1040, U.S. Individual Income Tax Return, for 1988 for [REDACTED] and [REDACTED] [REDACTED] showing the applicant as a dependent for 12 months.

10. A Form I-130, Petition for Alien Relative, filed by the applicant's father in his behalf indicates that the applicant arrived in this country on January 15, 1988.

The immunization record (Item # 1 above) does not contain sufficient information and certification to document that the immunizations were performed for him here in the United States and not merely recording treatments that had been received abroad. The notarized statements and the CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarants have been reviewed (Items # 2 through # 5) in juxtaposition to the other material in the record. These statements are not sufficiently probative to establish the applicant's continuous residence in the United States since before January 1, 1982 through the requisite time period. The notarized statements from [REDACTED] and [REDACTED] (Item # 6) indicate the applicant is named "[REDACTED]" thus detracting from their credibility. The notarized statement from [REDACTED] (Item # 7) indicates that during his first visit in 1987 he met the applicant who was "age 5." During 1987, the applicant was nine or ten years old as he was born on June 10, 1977. The bedroom lease contract for [REDACTED] and [REDACTED] (Item #9) specifies that only the couple can reside in the bedroom and does not list the applicant as an allowed resident, suggesting that he was residing elsewhere in 1986.

Based on the Form 1040 for 1988 for [REDACTED] and [REDACTED] (Item # 9) and the Form I-130 filed by the applicant's father in his behalf (Item # 10) the AAO accepts that the applicant was present in the United States for a part of the requisite period. However, 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 applicant has failed to provide evidence of continuous residence from prior to January 15, 1988.

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. Given the absence 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. Consequently, the director's decision to deny the application is affirmed.

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