



U.S. Citizenship
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FILE:



Office: NEW YORK

Date:

JUN 19 2009

MSC-05-244-15818

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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. 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 (together comprising the I-687 Application). The director denied the application, finding that none of the contemporaneous documents submitted established continuous residence in the United States throughout the requisite period. The director stated further that the affidavits submitted were neither credible nor amenable to verification.

On appeal, the applicant claims that the director has erroneously denied the application and further contends that he has submitted sufficient contemporaneous documents and credible affidavits to support his application for temporary resident status.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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.

The sole issue here is whether the applicant has provided sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously from before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

To prove that he has resided continuously in the United States throughout the requisite period, the applicant provided various contemporaneous documents including a certified copy of a receipt for duty and release slip issued to him by U.S. Customs in New York on February 21, 1981; a letter dated February 21, 1981 from [REDACTED], who indicated that the applicant was a crew member on his ship for 14 months; a photocopy of his Form I-95A, Crewman's Landing Permit, showing December 10, 1990 as the date he was legally admitted to the United States; a photocopy of an airline ticket issued on September 1, 1993; and photocopies of incident information slip and report of lost or stolen motor vehicle items both dated July 24, 2002.

Upon review, the AAO agrees with the director that the receipt for duty and release issued by U.S. Customs on February 21, 1981 and the letter from [REDACTED] show that the applicant was present in the United States in February 1981, but individually and together, they do not show that he has resided in the United States continuously throughout the requisite period. The Form I-95A issued in December 1990, the 1993 airline ticket, as well as the incident information and the report of loss or theft do not pertain to the requisite period and will not be considered.

Additionally, the applicant submitted five affidavits. states in his affidavit that the applicant worked at his store, as a laborer from November 1981 to December 1989. However, the affidavit lacks probative value as the affiant fails to offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide information about where the applicant resided at the time of employment, what his specific duties were with the company, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. Further weakening the probative value of the affidavit are the statements made by the affiant's son about the applicant's employment. When contacted by telephone, son named confirmed that he and his father ran throughout the time the store was in existence but denied that he or his father ever hired the applicant. On appeal, the applicant contends that has no son named but offers no independent objective evidence to resolve the question whether he ever worked for or not. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

claims in his affidavit that he moved to the applicant's apartment in New York in May 1981 and lived with the applicant until December 1989. He also states that during this time he and the applicant worked together at but does not explain with sufficient detail how he first met the applicant in the United States or how he dates his acquaintance with the applicant in 1981. Nor does he submit corroborating documents such as rent receipts, utility bills, or lease documents to substantiate his claim. Further, son, when contacted by USCIS, stated that had never employed casting doubt on the veracity of his statement that he worked and lived together with the applicant in the United States during the requisite period.

claims in his sworn statement that and his friend were his tenants from November 1981 to July 1990 but does not state the name of friend and offers no detailed information as to how much the tenants paid for the rent. Nor does he submit supporting documents such as rent receipts, lease agreements, or a photocopy of the title of the property to corroborate his claim. The affidavit, by itself, is not probative as evidence of the applicant's residence in the United States during the requisite period.

indicates in his affidavit that he first met the applicant in 1981 at his mother's house. further states that the applicant frequently helped his mother collect and distribute clothes and toys to the needy children from 1981 to 1989. This affidavit lacks probative value because the affiant does not state with specificity how he first met the applicant in the United States, how he dates his acquaintance with him, where the applicant resided during the requisite period, or offer other details about the applicant's life in the United States to

establish the credibility of his assertion. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Without sufficient detail describing the relationship with the applicant and without any corroboration from other contemporaneous documents, the affidavit lacks probative value and has only minimal weight as evidence of the applicant's eligibility for temporary resident status.

Finally, [REDACTED] claims in his affidavit that the applicant stayed at his home in Montreal, Canada, for two days before continuing to the United States in February 1987 but does not describe with sufficient detail where the applicant lived in the United States. The affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period. The AAO agrees with the director that the evidence submitted, when combined with the director's finding about the applicant's employment during the requisite period, is not sufficient to show that the applicant has resided in the United States continuously from before January 1, 1982 through the date he filed or attempted to file the application.

The noted inconsistencies, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 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.