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FILE:



MSC 05 173 11548

Office: LOS ANGELES

Date:

JUN 30 2009

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he was continuously resident in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal the applicant asserts that he meets the continuous residence and other requirements to qualify for temporary resident status.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. See 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. See 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 the regulation at 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 from May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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).

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 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.

The regulations provide an illustrative list of documents that an applicant may submit – which includes affidavits and “any other relevant document” – as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since 1978, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on March 22, 2005.

As evidence of his residence in the United States during the 1980s the applicant submitted the following documentation:

Five affidavits from acquaintances in Canyon City and Acton, California, all prepared in March 2005, including (1) [REDACTED], who stated that he has known the applicant in Newhall, California since May 15, 1981, that they met in the park of Newhall City, and that they worked in the same company; (2) [REDACTED] who stated that he has known the applicant in Newhall, California since April 1982, and that the applicant was his gardener on a weekly basis; (3) [REDACTED], who stated that he has known the applicant in Newhall, California since March 1983, and that the two have been neighbors since then; (4) [REDACTED] who stated that he has known the applicant in Newhall, California since June 1987, and that he has been a good client as well as a friend; (5) [REDACTED] who stated that he has known the applicant in Newhall, California since February 1988, and that they were co-workers at Valencia Car Wash.

- A letter from [REDACTED], Associate Pastor of Our Lady of Perpetual Help Church in Santa Clarita, California, dated May 15, 2002, stating that the applicant had been registered at the church for two years and claimed to have been attending mass every Sunday since 1984.

- Photocopies of five registered mail envelopes from the applicant in Newhall, California to [REDACTED] in Mexico, four of which have illegible postmarks and the other of which has a postmark date of March 16, 1988.

A series of photographs of the applicant, all in photocopied form, allegedly from the years 1984, 1985, 1986, 1987, and 1988.

On May 21, 2007, the director issued a Notice of Denial, indicating that the evidence of record was insufficient to establish the applicant's continuous residence in the United States during the requisite time period – before January 1, 1982 through May 4, 1988 – to qualify for adjustment to temporary resident status.

On appeal the applicant reiterates his claims to have entered the United States in 1978, resided in the country continuously since then, and to meet all the requirements for adjustment to temporary resident status. The applicant submits some photocopied documentation, much of which was already in the record and none of which constitutes additional evidence of the applicant's residence in the United States during the 1980s.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. The AAO determines that he has not.

The five affidavits from acquaintances, dated in 2005, have fill-in-the blank formats with little personal input by the affiants. The affidavits provide few details about the applicant's life in the United States during the 1980s. Only two mention anything about where the applicant worked during those years, and even they did not indicate the time frame of the applicant's employment. None of the five affiants provided a residential address for the applicant during the 1980s. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with any of the affiants in the United States. Furthermore, only one of the affiants claims to have known the applicant before January 1, 1982, and two of them do not claim to have known the applicant until 1987 or 1988. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

As for the letter from [REDACTED], the regulation at 8 C.F.R. § 245a.4(iv)(E) provides that attestations by churches must (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (6) establish how the church official knows the applicant; and (7) establish the origin of the information about the applicant. [REDACTED] letter does not meet all the above criteria and, most significantly, indicates that the church has no record of the applicant before 2000. Accordingly, the letter has no probative value of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

The five photocopied envelopes in the record, as previously mentioned, have only one legible postmark, and it is dated March 16, 1988. Even if the AAO accepted that one envelope as evidence of the applicant's residence in the United States in March 1988, it would not show that the applicant resided in the United States in the years before that, much less before January 1, 1982. Accordingly, the letter envelope postmarked March 16, 1988 has little probative value as evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Finally, the applicant's claim that the photographs in the record date from 1984 to 1988 cannot be verified. There are no definitive indicators in the photographs that prove they were taken during those years. The original photographs are not in the record, which makes it even more difficult to determine their age. Moreover, even if the photos were taken in the United States during the years 1984-1988, they would not prove that the applicant resided continuously in the United States during those years, much less before January 1, 1982. For the reasons discussed above, the photographs have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the years 1984 to 1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

The appeal will be dismissed, and the application denied.

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