



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-098-18044

Office: LOS ANGELES

Date: **MAR 20 2009**

IN RE: Applicant: [REDACTED]

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 if your case was 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, or *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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 to U.S. Citizenship and Immigration Services (CIS). The director denied the application and determined that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he resided continuously in the United States throughout the entire requisite period. Specifically, the director in his decision indicated that the affidavits submitted did not contain sufficient detail concerning the applicant's continuous residence in the United States during the required period. The director also stated that none of the affiants submitted contemporaneous documents to show that they themselves were in the United States during the period specified in their affidavits.

On appeal, the affiants through the applicant submit various contemporaneous documents to establish that they were in the United States during the period specified in their affidavits. The applicant asserts in his brief that the affidavits along with other evidence of record are relevant, credible, and probative as evidence of his continuous residence in the United States during the required 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 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)(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, *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 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 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet the burden of proving by a preponderance of the evidence that he resided in the United States continuously in an unlawful status for the duration of the requisite period.

During an interview with a United States Citizenship and Immigration Service (USCIS) officer on November 3, 2006, the applicant testified that he first came to the United States in November 1980 and further stated that he was attending school in California from November 1980 to 1984. As evidence, the applicant submitted a letter from Fillmore High School, a memo from Santa Paula High School, official transcripts from both schools, and a photocopy of a diploma received from Santa Paula High School upon his graduation. Upon a *de novo* review, the AAO finds that the documents noted above are credible as evidence that the applicant resided continuously in the United States from 1980 to 1984.

The applicant also submitted eight affidavits from his friends, relatives, and former employer as proof that he resided and worked in the United States continuously throughout the requisite period. As indicated earlier, the volume of evidence is not necessarily the decisive factor in the search for the truth. The contents of the affidavits must be assessed and the quality of the evidence determined. *Matter of E-M-*, *supra*. His friends, relatives, and former employer in their sworn statements attest to the applicant's residence and presence in the United States since 1980. All of them explain the circumstances under which they came to know the applicant and include the address or addresses where he resided in the United States as well as describe in their affidavits the frequency of contact

with him during the requisite period. The witnesses provide their addresses and telephone numbers where they can be contacted and further state their willingness to come forward and testify if necessary for the applicant. Additionally, the affiants submitted contemporaneous documents received during the requisite period such as a school transcript and high school diploma, state identification card, or legal permanent resident card to establish their residence in the United States during the required period.

Upon review, the AAO finds that the affidavits along with the contemporaneous documents are credible as evidence of the applicant's continuous residence in the United States for the duration of the requisite period. Viewed individually and within the totality of the evidence, the evidence in the record presents a consistent and credible account of the applicant's continuous residence in the United States throughout this period. Therefore, it is concluded that the applicant has established by a preponderance of the evidence that he entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the basis of denial cited by the director.

The AAO notes that the record contains a complete application for special agriculture workers (SAW) that the applicant filed in 1988. On March 26, 1988, the SAW application was approved, and consequently, an I-94, Arrival/Departure Record, was issued to the applicant. The applicant was granted temporary resident status as a special agricultural worker, group II, on April 28, 1988. Under section 210(a)(2)(B) of the Act, 8 U.S.C. § 1160(a)(2)(B), the applicant should have been automatically eligible for adjustment of status to permanent residence on April 28, 1990. The applicant may now file a Form I-90 to obtain evidence of his permanent residence.

The appeal will be sustained. Should the applicant's benefits under SAW be revoked or terminated for any reason, the applicant may seek permanent residence under section 245A of the Act. In this instance, the director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.