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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: ORLANDO

Date:

NOV 02 2009

MSC 06 018 11711

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, Orlando, Florida, and 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 determined 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. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant puts forth a brief disputing the director's finding and two additional photographs and the same affidavits that were submitted in response to the Notice of Intent to Deny, and considered by the director in her decision to deny the application.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving 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).

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 including affidavits 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.* 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 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.

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on January 3, 1997.¹ Accompanying the Form I-485 is a Form G-325A, Biographic Information, signed by the applicant on December 16, 1996. The applicant indicated on his Form G-325A that he resided in his native country, Trinidad, from January 1972 to February 1988.

The record contains a copy of the applicant’s Trinidadian passport, which reveals that on March 15, 1985, the applicant was issued a B-2 multiple entry non-immigrant visa in Port of Spain, Trinidad. The record reflects that the applicant lawfully entered the United States on April 2, 1985 and departed June 4, 1985. The applicant lawfully entered the United States on February 28, 1988.

On his Form I-687 application, the applicant indicated that he entered the United States in January 1981 and listed one absence from the United States during the requisite period; February 1988.

¹ The Form I-485 application was denied by the Director, New York, New York, on April 8, 1997.

At the time the applicant filed his Form I-687 application, he provided no documentation to establish continuous residence and physical presence in the United States during the requisite period.

On September 11, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of the information listed on his Form G-325A and in his passport. The director noted that the current application appeared to be a fraudulent attempt to circumvent the laws of the United States.

The applicant, in response, reaffirmed his claim to have entered the United States prior to January 1, 1982 and to have continuously resided in this country since that time. The applicant, asserted, in pertinent part:

I was only eight years old. How my parents got me to the United States is not clear to me, or why we traveled, because of my age. I did not fill out any paperwork, my parents or sister did. Anytime I traveled it was due to the fact of my parents or someone else filling out the paperwork. I was under 16 at all the times listed above. If I entered with a visa or not, because of my age, I did not have the recollection.

My parents have passed away, or maybe they would have some additional information, or physical proof that I was here.

The applicant provided:

- A letter dated October 1, 2007, and a declaration from a sister, [REDACTED] who indicated that the applicant "came to the United States in 1982." The affiant indicated that she and the applicant resided with their uncle, [REDACTED] and their father, [REDACTED] in New York City at [REDACTED]
- A statement from a niece, [REDACTED] who indicated, "I moved to New York in with my mother in 1984" and became reacquainted with the applicant.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they met the applicant in 1983. [REDACTED] indicated that she met the applicant at a dinner party. [REDACTED] indicated that he used to take the applicant to church. [REDACTED] indicated that he used to chaperone the applicant to and from school and on Sundays to church.
- An affidavit from [REDACTED] who indicated that she met the applicant in 1988 at a family party. The affiant asserted, "I asked [the applicant] about having his green card he said he came to the country with a visa in 1982 at Kenndey [sic] Airport."
- An affidavit from [REDACTED] of Chagunas, Trinidad, who indicated that she was at the airport in Trinidad to see the applicant depart in 1982, and that she received a telephone call from the applicant's mother from John F. Kennedy Airport indicating that everything was okay.
- A statement from [REDACTED] who indicated that she has known the applicant since 1987, and has remained good friends with the applicant since that time.

- An affidavit from [REDACTED] who indicated that he met the applicant at a birthday party in 1987. The affiant indicated that he is married to the sister of the applicant's wife.
- An affidavit from [REDACTED] who indicated that he met the applicant in 1987 at a social gathering. The affiant indicated that the applicant informed him that "his sister actually bought [sic] him to the United States and he was living with her at the time."
- A wedding photograph.

The director, in denying the application, on January 22, 2008, noted, in pertinent part:

Those affidavits are not the sole basis for the denial of your rebuttal, albeit a important bit of information confirming that either the affiants have submitted erroneous affidavits or the G-325A has been fraudulently complied, or information shown in copies of your passport pages have been altered. The G-325A, Biographic Information, attesting to your presence in Trinidad from January 1972 (your birth date) until February 1988, was signed by you December 16, 1996, when you were 24 years old.

The director determined that the applicant's entrance in February 1988 was his initial entry to reside in the United States. The director concluded that the applicant had failed to establish continuous residence in the United States since prior to January 1, 1982.

On appeal, the applicant asserts, in pertinent part:

I have traveled many times out of the United States and back with my parents. These were brief absences. There are other times I entered the United States without inspection, and therefore this information will not be on my passport. I have submitted numerous notarized affidavits from various individuals that have signed documents that state I have been in the United States since 1982, I traveled with my parents or family members in and out of the United States during the years 1982 through 1988.

The remaining brief contains the same arguments put forth in response to Notice of Intent to Deny

The statements issued by the applicant have been considered. However, the supporting documents discussed above do not support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The applicant claims that he entered the United States in January 1981; however, none of the affiants, including his sister attested to the applicant's entry into the United States prior to January 1, 1982.

In her affidavit, the applicant's sister indicted that the applicant resided with her in New York City at [REDACTED] during the requisite period. The applicant, however, on his Form I-687 application claimed residence at [REDACTED] during this period.

Item 32 of the Form I-687 application specifically indicates the applicant to list *all* absences from the United States dating back to January 1, 1982. The applicant has not provided a plausible explanation why he did not list his 1985 absence or his other alleged absences. The applicant was 33 years of age at the time he signed this application. It is noted that the applicant's sister makes no mention of the applicant's absences during the requisite period.

In his affidavit, [REDACTED] indicated he used to chaperone the applicant to and from school. However, the applicant has not provided any school records, which would clearly establish his residence in the United States, during the period in question.

The photographs submitted neither imply nor affirm the applicant's residence in the United States during the requisite period.

The information indicated on the Form G-325A tends to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence in the United States during the requisite period. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Therefore, based upon the foregoing, 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.