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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

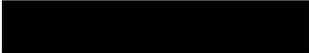


U.S. Citizenship
and Immigration
Services

41



FILE:



MSC 06 089 14466

Office: DALLAS

Date:

NOV 24 2009

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:



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.

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, Dallas, Texas, and is now before the Administrative Appeals Office 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 (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. 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. This decision was based on the applicant's sworn statement in which he admitted he first arrived in the United States in 1984.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982, through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service, now Citizenship and Immigration Services in the original legalization application period of May 5, 1987, to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel put forth a brief disputing the director's findings.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On his initial Form I-687 application signed March 28, 1990, the applicant claimed to have been absent only one time during the requisite period; December 21, 1987 to January 20, 1988.

At the time of his initial interview on February 28, 1991, the applicant admitted, under oath, in a signed sworn statement that he first entered the United States in 1984 and that the employment letter from [REDACTED] was false; a friend gave it to him at no cost.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982 to the date he attempted to file his application, the applicant submitted:

- An affidavit from [REDACTED] in Dallas, Texas, who indicated that the applicant was in his employ from September 15, 1981 to March 10, 1985, stripping furniture and doing odd jobs on the farm.
- Receipts from Honda North and from an attorney (last name is indecipherable) in Dallas, Texas purportedly dated September 19, 1982 and March 20, 1987, respectively.
- A statement dated March 28, 1990, from [REDACTED] in Dallas, Texas, who indicated that the applicant was in his employ from December 15, 1986 to December 20, 1987.
- Earnings statements from Weatherguard Inc., for the periods ending April 15, 22 and 29, 1988 and a 1988 wage and tax statement.
- Three earnings statements issued in February and March 1988 and a letter dated March 14, 1990, from [REDACTED] in Dallas, Texas, who indicated that the applicant was employed under the alias [REDACTED] from March 19, 1985 to November 13, 1986 as a janitor.
- A statement dated March 27, 1990, from [REDACTED] in Dallas, Texas, who indicated that the applicant was a resident at [REDACTED] and [REDACTED] from March 1986 to December 1988.

On October 27, 2007, the director issued a Notice of Intent to Deny, which advised the applicant of his sworn statement of February 28, 1991. The applicant was granted 30 days in which to submit a rebuttal. Counsel, in response, submitted three photographs of the applicant; an envelope that appears to have been postmarked in 1983; and several other envelopes with indecipherable postmarks. Counsel also provided an affidavit from the applicant, who indicated that he first arrived in the United States in September 1981; his first job was at [REDACTED]; he first resided with three acquaintances at apartment complex [REDACTED] he resided at three apartments at the apartment complex during the ten-year period; and there were not a lot of employment records as "all my employers use to pay cash as we work on the field."

The director determined that the applicant had failed to submit sufficient evidence to overcome his sworn statement of February 28, 1991. The director concluded that the applicant had not established continuous residence in the United States since prior to January 1, 1982 and, therefore, denied the application on December 19, 2007.

On appeal, counsel provides an affidavit from the applicant who attests to residing with [REDACTED] and [REDACTED] from 1981 to 1989. The applicant asserts that he is providing several photographs "confirming that I lived [REDACTED] and # [REDACTED] from 1981-1989." The applicant also indicates that the interviewing officer was very intimidating and made him very nervous and stressed. The applicant, asserted, in pertinent part:

She [the interviewing officer] made me so nervous in her manner of questioning me, almost badgering me, that I in an honest mistake got my dates mixed up. I honestly did not mean to

get my dates mixed up, but she confused me. I state today that when I entered the United States was in 1981 and since then have made it my home.

Counsel also provides copies of documents that were previously submitted along with:

- An affidavit from [REDACTED] who attested to the applicant's residence in the United States since 1981.
- Affidavits from [REDACTED] and [REDACTED] who indicated that the applicant resided with them from 1981 to 1989 at [REDACTED] and [REDACTED]
- A printout from the Honda Suzuki North website reflecting that the company was established in 1963.

The statements issued by counsel and the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to 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.

An applicant raises serious questions of credibility when he admits to having provided false information or fraudulent documentation in the application process. An inference cannot be drawn that the information or documentation is now accurate simply because the applicant recants his admissions.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965). Furthermore, in the absence of exceptional circumstances, a challenge to the voluntariness of an admission or confession will not be entertained when first made on appeal. *Matter of Stapleton*, 15 I&N Dec. 469 (BIA 1975).

The employment affidavits failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiants also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The receipts from Honda North and the attorney raises questions to their authenticity as the years appear to have been altered to reflect they were issued during the requisite period.

In their affidavits [REDACTED] and [REDACTED] attest to the applicant's residing with them during the requisite period at [REDACTED] and [REDACTED]. On his initial Form I-687 application, however, the applicant did not list these apartment numbers as places of residence during the requisite period.

█ in his statement, attested to the applicant's residence at █ and █ from March 1986 to December 1988. The applicant, however, did not claim on either Form I-687 application residence at this address.

█, in her affidavit, failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of her relationship with the applicant or the basis for her continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of the claim.

The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken during the 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).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

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.