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FILE:



Office: NEWARK

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OCT 27 2009

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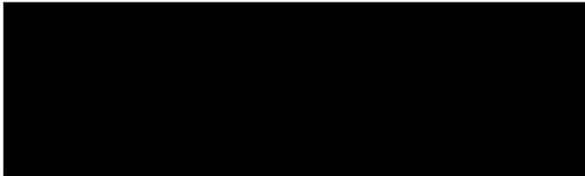
IN RE:

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, Newark, New Jersey. The applicant appealed the decision and the appeal was rejected by the Director, National Benefits Center. The Director, National Benefits Center determined that the appeal had been erroneously rejected and subsequently reopened the matter. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director of the Newark, New Jersey office determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director further determined that 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 United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates both the applicant's claim as a class member in one of the requisite legalization class-action lawsuits and residence in this country for the required period. Counsel asserts that the applicant had submitted sufficient evidence to demonstrate his residence in this country during the period in question.

Although the director determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that he was eligible for class membership. The adjudication of the applicant's appeal as it relates to his claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 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. *See* 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. 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 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.

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 his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on June 1, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed "[redacted]" in Jersey City, New Jersey from July 1981 to October 1981, "[redacted]" in Jersey City, New Jersey from November 1981 to September 1987, and "[redacted]" in Jersey City, New Jersey from October 1987 through at least the termination of the original legalization application period on May 4, 1988. Furthermore, at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant indicated that he had two absences during the requisite period when he traveled to India to see family and friends from December 1984 to January 1985 and from July 1987 to August 1987. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment since entry, the applicant indicated that he was employed as a deliveryman by Sal's Food Center in Brooklyn, New York from December 1981 to February 1984 and that he was a self-employed "worker" from October 1981 through at least the termination of the original legalization application period on May 4, 1988.

The record further shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on April 24, 1990. A review of the Form I-687 application reveals that the applicant was assisted in its preparation by another individual. At part #33 of this Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised on April 30, 2004 and again on October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the preparer indicated that the applicant resided at "[redacted]" in Jersey City, New Jersey from November 1981 to September 1987 and "[redacted]" in Jersey City, New Jersey from October 1987 through at least the termination of the original legalization application period on May 4, 1988. Furthermore, at part #35 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the preparer indicated that the applicant had been absent from this country when he traveled to India because of a family illness from February 11, 1987 to April 10, 1989. In addition, at part #36 of the Form I-687 application where applicants were asked to list all employment since entry, the preparer indicated that the applicant was self-employed but failed to list his occupation or the dates he engaged in self employment as a means of support.

The fact that the two Form I-687 applications contained in the record contain conflicting testimony relating to the applicant's places and dates of residence in 1981, the number and length of absences, and means of support raises questions relating to the applicant's overall credibility as well as the credibility of his claim of residence in the United States for the period in question.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted photocopied rent and retail receipts from various dates throughout the requisite period. However, the probative value of these receipts is minimal because all information relating to the applicant on these receipts is handwritten and the documents are photocopies rather than originals. "In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." 8 C.F.R. § 245a.2(d)(6).

The applicant provided a letter bearing the letterhead of Bank of America that is signed by [REDACTED] who listed her position as personal banker. [REDACTED] declared that the applicant was a customer of this bank since 1982. Nevertheless, the authenticity of this letter is questionable as the letterhead and body of the letter lack both an address and telephone number to contact either the bank or [REDACTED].

The applicant included a letter bearing the letterhead of Sal's Food Center in Brooklyn, New York that is signed by office manager [REDACTED]. Ms. [REDACTED] stated that the applicant worked for this enterprise as a salesperson on a commission basis from December 1981 to February 1984 rather than being a formal employee of Sal's Food Center. However, [REDACTED] failed to provide either the applicant's address of residence during that period he worked with this company or relevant information relating to the availability of business records reflecting the applicant's work as required by 8 C.F.R. § 245a.2(d)(3)(i). More importantly, the applicant failed to provide any explanation as to why his work with Sal's Food Center was not listed at part #36 of the Form I-687 application submitted on April 24, 1990.

The applicant submitted three affidavits signed by [REDACTED] two affidavits signed by [REDACTED] and individual affidavits signed by [REDACTED] and [REDACTED] respectively. While the affiants attested to the applicant's residence in the United States for the period in question or a portion thereof, their testimony was general, vague, and confusing and lacked sufficient details and verifiable information to corroborate the applicant's residence in this country for the requisite period.

The applicant provided a letter dated September 8, 1986 that bears the letterhead of the [REDACTED] in Jersey City, New Jersey and signature of [REDACTED]. Mr. [REDACTED] noted that he was enclosing documentation in answer to the applicant's inquiry relating to life insurance policies. Regardless, the applicant failed to include the corresponding documents which were purported to have accompanied the letter.

The applicant included photocopied envelopes postmarked on dates beginning in 1981 through 1988 that were represented as having been mailed to him at addresses he claimed to have resided in this country during the requisite period. However, the veracity of these postmarks can neither be confirmed nor denied as the postmarks were generated by a postal meter rather than postmarks applied to stamped envelopes by postal authorities. The regulation at 8 C.F.R. § 245a.2(d)(6) notes that the probative weight of these envelopes is further diminished as the envelopes are photocopies rather than originals.

The applicant submitted a photocopied envelope that appeared to be postmarked on an indeterminate day of November 1981, contained Indian postage stamps, and was represented as having been mailed from India to the applicant at an address in this country. The AAO issued a notice to the applicant and counsel on May 19, 2009 indicating that this postmarked envelope was fraudulent because a stamp on the envelope had been issued after the November 1981 postmark. In response, counsel asserts the postmark in question could be read as a November 1991 postmark when the envelope is viewed as a different angle. A review of the photocopied envelope reveals that this postmark could also be interpreted as a November 1991 postmark rather than a November 1981 postmark. As a result of this ambiguity relating to the date of this postmark, the AAO withdraws the finding of fraud regarding the photocopied envelope. Regardless, this envelope is not probative of the applicant's claim of residence in the United States for the period value to the as it cannot be determined when the the envelope had mailed to the applicant.

Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate his residence in this country during the period in question have been considered. However, the supporting documents contained in the record do not contain specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the period in question. In addition, the applicant himself has provided inconsistent and conflicting testimony regarding critical elements of his claim of residence in the United States for the requisite period.

The absence of sufficiently detailed supporting documentation and the conflicting testimony cited above seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.