



U.S. Citizenship
and Immigration
Services

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OCT 30 2009

FILE:

[REDACTED]

Office: HOUSTON

Date:

MSC 05 237 14657

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. The file has been returned to the National Benefits Center. 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, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On appeal, the applicant submits a statement and resubmits documentation previously provided.

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).

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).

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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on May 25, 2005. The director denied the application on August 29, 2007.

The applicant claims to have initially entered the United States without inspection in January 1981 when he was 12 years-old. The applicant claims that he did not attend school in the United States but rather helped his father as a farmer in order to provide for his mother and younger brother in Mexico. He also claims to have departed the United States to visit Mexico on several occasions throughout the ensuing years, but that no single departure exceeded 45 days, and the departures did not exceed 180 days in the aggregate.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *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 evidence to demonstrate that she resided in the United States for the duration of the requisite period. In support of his application, the applicant has submitted the following documentation throughout the application process:

1. Similar affidavits dated in 2005 from _____ stating he met the applicant in January 1981; _____ stating he met the applicant in February 1981; _____ stating he met the applicant in April 1981; _____ and _____ stating they met the applicant in June 1981; _____ and _____ stating they met the applicant in November 1981; _____ stating he met the applicant in November 1993; and, _____ stating he met the applicant in December 1986.

2. Photocopies of envelopes addressed to [REDACTED] (which is also the name of the applicant's father) from [REDACTED] and [REDACTED] and [REDACTED] in Mexico. The postmarks on the envelopes are partially illegible.
3. Objective evidence dated in or after 1992, including a court disposition and divorce transcript, children's birth certificates, earnings and insurance statements, a profit sharing plan, employer letters, and tax documents.

In response to a Notice of Intent to Deny (NOID) the application, the applicant also submitted the following documentation:

4. Affidavits dated in 2007 from [REDACTED] stating he met the applicant in November 1993, and [REDACTED] stating the applicant and his father worked with her and her husband from 1981 to 1985.
5. Updated affidavits (see No. 1, above) dated in 2007 from [REDACTED], [REDACTED], and [REDACTED].
6. Letters dated in 1981, 1982, 1983, and 1985, allegedly from the applicant's aunt [REDACTED] (the letter dated August 2, 1985 is not signed). All of the letters are in the same hand-writing on the same lined stationary.
7. Letters dated in 1981, 1984 and 1985, allegedly from the applicant's cousins [REDACTED] and [REDACTED]. All of the letters are in the same handwriting on the same lined stationary.

In summary, to establish his continuous residence and physical presence from prior to January 1, 1982, through 1991, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided any money order receipts, passport entries, children's birth certificates, bank book transactions, letters of correspondence, a Social Security card, Selective Service card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi). The documentation provided by the applicant consists mainly of correspondence and third-party affidavits ("other relevant documentation"). The affidavits lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant throughout the required time period.

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 paucity of the documentation submitted, the AAO concludes the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States throughout 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.

Furthermore, it is noted that at the time of filing his application in May 2005, the applicant initially had indicated in response to question # 37 on the Form I-687 that he had never been arrested or charged with any offense. However, the result of a Federal Bureau of Investigation (FBI) report received in connection with his application revealed that the applicant had been arrested by the Pasadena, Texas, Police Department in September 2002 and charged with one count of "INJ TO A CHILD BODILY INJ" and one count of "ASSLT CAUSES BODILY INJ." The applicant has provided documentation indicating that the charge of Injury to a Child was dismissed and that he was convicted of Assault and Bodily Injury, a 3rd degree Felony offense, in October 2002, for which he received 30 days confinement. The applicant is ineligible for temporary status due to his having been convicted of a felony offense.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

It is noted that in any future proceedings before United States Citizenship and Immigration Services (USCIS), the applicant must submit evidence of the final court dispositions of any additional charges against him.

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