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U.S. Citizenship
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FILE: MSC 05 235 16406

Office: LOS ANGELES

Date: SEP 22 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.

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, 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that United States Citizenship and Immigration Services (USCIS) records indicate that the applicant first arrived in the United States in 1985, and that various inconsistencies exist in the record concerning the applicant's employment during the requisite period.

On appeal, counsel submits a brief and additional information stating that the applicant has established his eligibility for the immigration benefit sought.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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).

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.* at 80. 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, 431 (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 issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant’s claim:

- The applicant has submitted credible evidence establishing his residence in the United States during the requisite period. Relevant portions of the evidence presented are summarized as follows:

The applicant submitted earnings records from the United States Social Security Administration showing that the applicant was employed and had earnings in the United States in 1981, 1982 and 1983. The Social Security Administration record is supported by original W2 forms for those years.

The applicant submitted a Certificate of Achievement from the Los Angeles Unified School District, West Valley Occupational Center stating that the applicant completed 120 hours of English As A Second Language instruction. The certificate is dated December 14, 1984. The certificate is not supported by a letter from the school district or any other documentation attesting to the applicant’s school activities during 1984. The applicant submitted a Sensor Technology, Inc. payroll form for the issuance of a manual paycheck dated May 25, 1984 which contains a notation indicating that the check was being issued because the applicant’s time card had not been submitted. It is noted that Sensor Technology submitted an employment letter

dated April 20, 1987 indicating that the applicant began employment with that company on April 21, 1986, which brings into question the authenticity of the manual payroll check form.

The applicant submitted a printed receipt from King Express listing the applicant's name and address and dated June 7, 1985.

The applicant submitted 1986 pay stubs, an employment letter from [REDACTED] (Personnel Manager) for Sensor Technology dated April 20, 1987 stating that the applicant was employed by that company since April 21, 1986, a job performance appraisal dated April 21, 1986, a 1986 W2 Form, a copy of his 1986 tax return, a California Identification Card issued in 1986, and a letter dated October 3, 1988 from the California Franchise Tax Board pertaining to the 1986 tax year to establish his residence in the United States in 1986.

The applicant submitted a copy of an Internal Revenue Service letter addressed to him dated April 13, 1987 pertaining to the 1986 tax year, a copy of his 1987 tax return, a copy of his 1987 W2 Form, and copies of 1987 pay stubs to establish his residence in the United States in 1987.

The applicant submitted a copy of his 1988 tax return, a copy of a letter from the Internal Revenue Service addressed to him dated May 23, 1988 pertaining to the 1987 tax year, copies of 1988 pay stubs and a copy of a bank statement in his name issued in 1988 to establish his residence in the United States in 1988.

The applicant submitted several sworn statements from individuals attesting to his residence in the United States for all, or a portion of, the requisite period.

In this instance, the applicant submitted substantial evidence which corroborates his claim of residence in the United States during the requisite period. Despite minor inconsistencies in the record, when taken as a whole, the evidence establishes that the applicant's claim to continuous residence in the United States during the requisite period is probably true. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Therefore, based upon the foregoing, the applicant has established 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, eligible for temporary resident status under section 245A of the Act on this basis.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.



ORDER: The appeal is sustained.