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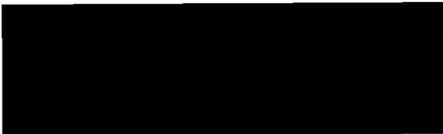
SEP 23 2009

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, New York, 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 (together comprising the I-687 Application). In adjudicating the application, the director identified a number of inconsistencies and discrepancies between the applicant's testimony during the interview and the evidence of record concerning how or where the applicant first entered the United States before January 1, 1982, where he lived during the requisite period, and when or for how long he left the United States in 1987. The director also found the applicant ineligible for the benefit sought as he stated during the interview that he left the United States for about 60 days in 1987.

On appeal, the applicant states he has previously filed several Freedom of Information Act (FOIA) requests before filing his Form I-687 application in 2004 but nothing has ever been furnished to him. Additionally, the applicant claims the director might have wrongfully consolidated his currently filed Form I-687 application with someone else's application filed in 1990. He further asserts he has resided in the United States continuously since before January 1, 1982 and submits additional evidence to substantiate his assertion. The record establishes that the applicant's most recent FOIA request was satisfied on May 28, 2009.

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).

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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45

days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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).

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). 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.2(d)(6).

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, "[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 or petition.

As noted above, the applicant believes the director has made a mistake when comparing his current application to another Form I-687 application filed in 1990. Upon review, the AAO finds that the 1990 application was filed by the applicant to establish class membership. Both the 1990 and 2004

applications contain the same name, date of birth, name of parents, and place of birth. Further, there is evidence currently submitted that duplicates the evidence submitted previously in connection with the application to register status as a class member in 1990. For instance, along with his current Form I-687, the applicant submitted photocopies of his passport, visa, and Form I-94 showing his entry into the United States on December 30, 1987 as a visitor. The same photocopies of the passport, visa, and I-94 were submitted in 1990 along with the applicant's previously filed Form I-687.

The director also observed that the applicant submitted six affidavits along with his previously filed Form I-687. The director found that none of the affiants provided any documentation establishing his or her residence in the United States during the requisite period. Upon review, the AAO finds that the affidavit from [REDACTED] does not relate to the requisite period and will not be considered. The AAO additionally notes that [REDACTED], [REDACTED], and [REDACTED] all provided information inconsistent with part #30 of the applicant's current Form I-687 concerning where the applicant resided during the requisite period. Further, none of the affiants mentioned above provided concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that the affiants have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. Simply listing the addresses at which the applicant lived during the requisite period without providing any detail about the nature of the association with the applicant does not establish that the affiants have knowledge of the facts alleged. The AAO agrees with the director that the affidavits are not probative as evidence of the applicant's residence in the United States during the requisite period.

The director further found that the addresses on the two submitted Form I-687 applications were inconsistent with each other. No brief or additional evidence has been submitted or received to explain or resolve the discrepancies and inconsistencies in the record. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

The applicant asserted during the interview in connection with his current application for temporary resident status that he had resided in the United States since October 1980. To support his assertion, the applicant submitted a photocopy of an envelope with stamps, a rent receipt dated March 26, 1988 and two affidavits.

By themselves, the envelope and the rent receipt have no probative value as evidence of the applicant's residence in the United States during the requisite period. The postmark on the envelope is indiscernible. The envelope also contains an address that is inconsistent with the

applicant's address as listed in his 1990 application. The rent receipt shows an address which is not found in either the 1990 or 2004 applications.

generally states in his affidavit that the applicant has been living in the United States for a long time. [REDACTED] claims in her affidavit that the applicant lived at [REDACTED] Bronx, New York, as her tenant from October 1980 to October 1984. This information is inconsistent with the information provided by the other affiants and with part #33 of the applicant's previously filed Form I-687. Additionally, neither [REDACTED] nor [REDACTED] provides any detail about the applicant's life in the United States during the requisite period. Neither describes with any detail how he or she first met the applicant in the United States, where the applicant lived during the requisite period, or what the applicant did during the requisite period.

To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Simply stating that the applicant has lived in the United States since before January 1, 1982 without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish the applicant's continuous residence in the United States throughout the requisite period. The affidavits are inconsistent with other evidence of record, lack detail, and have no probative value as evidence of the applicant's residence in the United States during the requisite period.

On appeal, the applicant provides [REDACTED] naturalization certificate to prove that [REDACTED] was in the United States during the requisite period. Upon review, the AAO finds that the naturalization certificate is credible evidence of [REDACTED] citizenship, but it is not probative as evidence of the applicant's residence in the United States during the requisite period.

The evidence submitted, when considered together with the applicant's testimony and in light of other evidence of record, does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he filed or attempted to file the application for temporary resident status.

The discrepancies and inconsistencies in the record as noted by the director, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract 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. It is concluded that 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.

Further, the AAO agrees with the director that the applicant is ineligible for the benefit sought in that he admits that he left the United States for more than 45 days between October 30, 1987 and December 30, 1987. As noted above, an applicant for temporary resident status is required to be physically present in the United States from November 6, 1986 through the date he or his parent filed or attempted to file the application, even though an absence that is found to be brief, casual, and innocent during this period shall not break his or her continuous physical presence. 8 C.F.R. § 245a.2(l), I.N.A. § 245A(a)(3), 8 U.S.C. § 1255a(a)(3). Here, the applicant has not provided any evidence or explanation to show that his absence from October 30, 1987 to December 30, 1987 was brief, casual, and innocent. The applicant broke his continuous physical presence in the United States when he left the United States on October 30, 1987 and failed to establish that his absence for more than 45 days was brief, casual, and innocent. For this additional reason, the application may not be approved.

The AAO additionally finds that the applicant is inadmissible and thus, ineligible for the benefit sought in that he claims to have reentered the United States with a visitor's visa on December 30, 1987. The applicant's reentry with a visitor's visa on that date is inconsistent with his intention to resume permanent residence in the United States on that date. The applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit sought. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. The application may not be approved for this additional reason.

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