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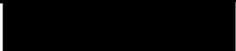


U.S. Citizenship
and Immigration
Services

L1



FILE:



MSC 05 140 10396

Office: HOUSTON

Date: APR 01 2010

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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director 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 section 245A of the Immigration and Nationality Act (Act) and the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim. Counsel objects to the director's failure to contact affiants who had provided supporting documents in order to verify their testimony, as well as the director's failure to send the notice of decision issued on February 10, 2009 by certified mail.

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 February 17, 2005. At part #33 of this Form I-687 application where applicants were asked to list all employment since entry, a preparer, [REDACTED] associated with the office of the applicant's former attorney indicated that the applicant had been employed as a yard worker at [REDACTED] in Houston, Texas

from 1981 to 1984, a welder at [REDACTED] in Houston, Texas from 1984 to March 1988, and a welder at [REDACTED] from 1988 to December 1990.

The record 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 May 23, 2001. At part #36 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 as of October 26, 2005) where applicants were asked to list all employment since entry, a preparer, [REDACTED] associated with the office of the applicant's former attorney indicated that the applicant had been employed as a yard worker at [REDACTED] in Houston, Texas from 1981 to 1984, a welder at [REDACTED] in Houston, Texas from 1984 to 1988, and a welder at [REDACTED] from 1988 to 1990.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted three affidavits signed by [REDACTED] two affidavits signed by [REDACTED], two affidavits signed by [REDACTED] two affidavits signed by [REDACTED] two affidavits signed by [REDACTED] and single affidavits signed by [REDACTED] and [REDACTED]. Although these affiants attested to the applicant's residence in this country for the requisite period or a portion thereof, their testimony is general and vague and lacks sufficient detail and verifiable information to substantiate his claim of continuous residence in this country for the period in question.

The applicant provided three employment affidavits that are signed by [REDACTED]. In his affidavits, [REDACTED] noted that he was the owner and president of [REDACTED] in Houston, Texas and that he employed the applicant as a welder from February 1982 through April 2000. However, [REDACTED]'s testimony that he has employed the applicant from February 1982 to April 2000 directly contradicted the testimony on both of the Form I-687 applications contained in the record that the applicant had only been employed by this company from 1984 to 1988. Further [REDACTED] failed to provide the applicant's addresses of residence during his entire period of employment with this enterprise and relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included an affidavit signed by [REDACTED] who declared that he had personal knowledge that the applicant that had been absent from the United States when departed on June 20, 1987 to travel to Mexico to see his sick mother and returned to Houston, Texas on July 5, 1987. Nevertheless, the probative value of [REDACTED] is limited as he attested only to the applicant's purported absence from the United States in 1987 without providing any additional testimony relating to the applicant's claim of residence in this country for the period in question.

The applicant submitted two affidavits signed by [REDACTED] and single affidavits signed by [REDACTED] and [REDACTED]. In these particular affidavits, these

affiants all attested to the applicant unsuccessful attempt to apply for legalization with the Service in Houston, Texas in July 1987. However, the testimony contained in these affidavits is limited as it relates only the circumstances surrounding the applicant's attempt to file a Form I-687 with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on February 10, 2009.

On appeal, counsel objects the director's failure to send the notice of decision issued on February 10, 2009 by certified mail and cites the regulation at 8 C.F.R. § 245a.4(b)(20)(ii) as supporting this objection. However, a review of the pertinent regulations reveals that 8 C.F.R. § 245a.4(b)(20)(ii) requires that a decision **terminating** an alien's temporary residence must be sent by certified mail, while a decision **denying** an application for temporary resident status must be in writing and need only be sent by regular mail as required under 8 C.F.R. §§ 245a.4(b)(15), 103.5a(a)(1), and 103.5a(b).

Counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim. Counsel objects to the director's failure to contact affiants who had provided supporting documents in order to verify their testimony. 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, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982 through the date he attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988. Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence.

The absence of sufficiently detailed supporting documentation and the conflicting and contradictory testimony relating to the applicant's employment history seriously undermines the credibility of his 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.

Although not noted by the director, the record shows that the applicant was convicted on June 23, 1998 for driving while intoxicated in the Harris County Court [REDACTED]. In addition, according to a Federal Bureau of Investigation report based upon the applicant's fingerprints, he was arrested on April 14, 2000 and charged with driving with an invalid license.

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