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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

41

FILE:

[REDACTED]

Office: HOUSTON

Date:

AUG 31 2010

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.

IN BEHALF OF APPLICANT:

[REDACTED]

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 applicant's temporary resident status was terminated by the Director, Houston, Texas. The matter is now before the Administrative Appeals Office 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 the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, counsel reiterated the applicant's claim of residence in this country for the period in question and asserted that the applicant submitted sufficient evidence to demonstrate such claim. Counsel contended that the USCIS failed to prove that any of the applicant's testimony in the Form I-687 application was false testimony as defined in section 101(f)(6) of the Act. Counsel indicated that a brief would be forthcoming within thirty days of receipt of the applicant's appeal.

However, a review of the record reveals that as of the date of this decision, neither the applicant nor counsel has submitted a statement, brief, or evidence to supplement the appeal. Therefore, the record must be considered complete.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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).

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.

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 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.

The applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on April 18, 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] from January 1981 to December 1985, "1625 Wirt Apt. #364" in Houston, Texas from December 1985 to March 1987,

and [REDACTED] from March 1987 to December 1987, and [REDACTED] from December 1987 to November 1988.

In support of his claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted United States Postal Service (USPS) receipts for registered mail, a paycheck stub, tax documents, a residential lease, and checks from the Aetna Casualty Company. This documentation in its totality is considered to be sufficient proof that the applicant resided in the United States from 1987 through the end of the requisite period on May 4, 1988. Consequently, the examination of the applicant's claim of residence in this country for the requisite period shall be limited to that period from prior to January 1, 1982 up through 1986.

The applicant provided a USPS receipt for registered mail that is dated December 24, 1986 and listed his return address as "[REDACTED]." However as noted above, the applicant testified that he did not begin to reside at this particular address in Houston, Texas until March 1987 at part #30 of the Form I-687 application. The applicant failed to provide any explanation as to how he was able to list this address as his return address on December 24, 1986 when he did not begin residing at "[REDACTED]" until March 1987.

The applicant included a Form W-2, Wage and Tax Statement, reflecting wages earned by and taxes withheld from the applicant at Polytex Fibers, Corp., in 1986. Regardless, this document is of limited probative value as the Form W-2 statement does not provide any evidence of the applicant's residence in the United States from prior to January 1, 1982 through the end of 1985.

The applicant submitted two employment affidavits both of which are signed by [REDACTED] stated that he employed the applicant as a landscaper at Best Lawn Service for \$134.00 per week from January 1981 to May 1985. However, [REDACTED] failed to include both the applicant's address of residence during his period of employment and relevant information relating to the availability of business records reflecting the applicant's employment at Best Lawn Service as required under 8 C.F.R. § 245a.2(d)(3)(i).

The applicant provided three affidavits signed by [REDACTED] three affidavits signed by [REDACTED] three affidavits signed by [REDACTED] two affidavits signed by [REDACTED] two affidavits signed by [REDACTED] and two affidavits signed by [REDACTED]. Although all of the affiants attested to the applicant's residence for the requisite period or a portion thereof, their testimony is general and vague and does not provide any specific and verifiable information to substantiate the applicant's claim of continuous residence in this country for the period in question.

The record reflects that the applicant was granted temporary resident status on November 14, 2006. The applicant subsequently submitted a Form I-698, Application for Adjustment from Temporary to Permanent Resident Status, on March 2, 2007.

The director determined that the supporting documents and testimony in the record contained in the record could not be considered as sufficient to corroborate applicant's claim of residence in for the entire requisite period. As a result, the director found that the applicant failed to establish that he continuously resided in this country in an unlawful status since prior to January 1, 1982. 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 Act and terminated the applicant's temporary resident status on November 6, 2009.

On appeal, counsel contended that the USCIS failed to prove that any of the applicant's testimony in the Form I-687 application was false testimony as defined in section 101(f)(6) of the Act. However, this particular section of the Act pertains only to applicant or petitioners who must establish "good moral character" for a particular period to establish eligibility for the benefit being sought. An applicant is not required to establish "good moral character" within the meaning of section 101(f)(6) of the Act to be eligible for either temporary residence or permanent residence under the provisions of section 245A of the Act.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted 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 record contains a piece of evidence, a USPS receipt for registered mail dated December 24, 1986, that attributed an address to the applicant which he himself testified that he did not live until March 1987 at part #30 of the Form I-687 application.

The absence of sufficiently detailed supporting documentation and the conflicting nature of evidence and testimony in the record impair the credibility of the applicant's claim of residence in this country for the period in question. 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 she 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).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence for the entire requisite period is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

Although the record does not contain sufficient evidence establishing that applicant is rendered ineligible as a result of his criminal history, it must be noted that the record contains copies of court dispositions establishing that the applicant had been convicted of two separate misdemeanor offenses. The applicant was convicted on March 8, 1993 in Harris County, Texas District Court for a misdemeanor assault violation in case [REDACTED]. The applicant was

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subsequently convicted on March 7, 1997 in Harris County, Texas Criminal Court for a misdemeanor driving while intoxicated violation in case number ██████████

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