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



U.S. Citizenship
and Immigration
Services

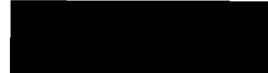


L1

DATE:

Office: LOS ANGELES

FILE:



IN RE: **DEC 08 2011**
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:

SELF-REPRESENTED

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.

Elizabeth McCormack

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. [REDACTED] LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (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 dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on January 6, 2006. On November 4, 2006, the director denied the application noting that the applicant failed to appear for a scheduled interview. Thus, the director indicated that the application was abandoned.

On October 4, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.¹ The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, the applicant states that he has lived in the United States since 1976 and asks that his application be reconsidered.

On October 13, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. On October 31, 2011, the AAO received the applicant's response to the AAO's NOID. In response to the AAO's NOID, the applicant submits a second letter from Simeon D. Peroff, three court dispositions, and other evidence of his presence in the United States after the requisite time period.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of his application.

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

¹ On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. See, *CSS v. Michael Chertoff*, Case [REDACTED]

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.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided two written statements from [REDACTED]. In his undated letter, [REDACTED] states that he is the owner and off-site property manager of [REDACTED], and that the applicant has been a tenant at [REDACTED] since July 1980. In his letter dated October 27, 2011, [REDACTED] states that he has known that applicant since 1980, but does not state that the applicant was his tenant since 1980. Although [REDACTED] states in the undated letter that he has been the applicant's landlord since 1980, he does not include a copy of the applicant's lease, state how much the applicant paid for rent each month during the requisite time period, or give other details to establish the veracity of the assertions.

The record also contains a payroll check from [REDACTED] dated June 21, 1983, a receipt from [REDACTED] dated April 2, 1982, a letter addressed to the applicant and postmarked November 19, 1981, a California Department of Motor Vehicles receipt dated October 14, 1983, a rent receipt dated February 1, 1987, a rent receipt dated August 1, 1986, a rent receipt dated November 1, 1986, and a rent receipt for July 1, 1985 to July 31, 1985. This is some evidence that the applicant was in the United States during those years.

Finally, the record contains copies of Internal Revenue Service Forms W-2 for 1981, 1982, 1983, and 1985. This is some evidence that the applicant was in the United States during those years.

The AAO notes in the NOID that in the Form I-687, the applicant listed his address at [REDACTED] from 1976 to 1980 and at [REDACTED] from 1980 to the present. On the Form I-687, the applicant listed his employer as [REDACTED] from 1984 to 1984. Several of the documents submitted provide an address or employer for the applicant that is inconsistent with the applicant's Form I-687. The applicant's address was listed as [REDACTED] on the [REDACTED] receipt dated April 2, 1982, on the letter addressed to the applicant and postmarked November 19, 1981, and on the applicant's 1981 and 1982 Forms W-2. The applicant submitted a payroll check from [REDACTED] dated June 21, 1983, a year prior to the time he stated he worked for [REDACTED] on the Form I-687.

The applicant did not address these inconsistencies in his response to the AAO's NOID. 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

There is evidence in the record of proceeding that the applicant has been arrested and convicted on three separate occasions.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record reflects the applicant has the following convictions:

- An October 9, 1987 conviction for violating section 647(A) of the California Penal Code - *Disorderly Conduct: Solicit Lewd Act 647(A) PC Misdemeanor* - in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California (Case No. [REDACTED]). This offense is considered a misdemeanor.
- An August 20, 1987 conviction for violating section 647(A) of the California Penal Code - *Disorderly Conduct: Solicit Lewd Act 647(A) PC Misdemeanor* - in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California (Case No. [REDACTED]). This offense is considered a misdemeanor.
- A May 29, 1998 conviction for violating section 647(A) of the California Penal Code - *Disorderly Conduct: Solicit Lewd Act 647(A) PC Misdemeanor* - in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California (Case No. [REDACTED]). This offense is considered a misdemeanor.

The applicant stands convicted of three misdemeanors. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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